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ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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Professor H.A. Innis

ROYAL COMMISSION ON TRANSPORTATION

May 11, 1950

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ROYAL COMMISSION ON TRANSPORTATION

Ottawa, Ontario,
Thursday, May 11, 1950

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - Chairman
HAROLD ADAMS INNIS - Commissioner
HENRY FORBES ANGUS - Commissioner

- - - - -

G. R. Hunter,
Secretary.

- - - - -

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| F.C.S.Evans, K.C. | | |
| H. C. Friel, K.C. |) | Canadian National Railways |
| C. W. Brazier |) | Province of British Columbia |
| J. J. Frawley, K.C. |) | Province of Alberta |
| J. Paul Barry |) | Province of New Brunswick |
| F. D. Smith, K.C. |) | Province of Nova Scotia |
| W. E. Darby, K.C. |) | Province of Prince Edward Island. |
| J.O.C.Campbell, K.C. | | |

- - - - -

Ottawa, Ontario,
Thursday, May 11th, 1950.

MORNING SESSION

ARGUMENT BY MR. BRAZIER - Continued.

THE CHAIRMAN: Very well, Mr. Brazier.

MR. BRAZIER: Mr. Chairman and Commissioners:

When I broke off on Tuesday afternoon I was just starting my argument in regard to the cost of service principle.

We have heard a great deal during the course of these hearings in respect to the value of service principle, but I suggest that nobody has yet been able to ascertain just what standard is used in determining the value of service. Several witnesses have loosely suggested that the value of service principle is essentially based on cost of service. However, I think it is quite apparent that what they are referring to as cost of service is the general over-all cost of service and certainly not the cost of service as far as any particular commodity is concerned. Provided the aggregate of rates being charged is sufficient to cover the over-all cost of operating the railways, the companies are satisfied with the rate scale. Our representation has been made in the hopes that the railways themselves will give the matter serious study.

Several witnesses have admitted that the railways are gradually losing their high-rated traffic, or the traffic from which the railways received their greatest return with rates allegedly established on a basis of value of service. If this process is to continue, I think without a doubt the result will be that in due course the railways will only have the low-rated traffic available to them. That certain railway officials think this is so is witnessed by the evidence given by Mr. Fairweather. His evidence to which I refer, my lord, is found in volume 110 at page 20242. This is what he said there:

"The Witness: Well, if you have a free competitive economy the value of service immediately drops down to the cost of service, and it is obvious you cannot maintain the principle of a value of service above cost unless you have absence of a functional competition."

Then Dr. Innis put this question to Mr. Fairweather:

"Commissioner Innis: Q. You were saying that the trucks were taking off types of commodities which were particularly affected by value of service?"

To which Mr. Fairweather answered:

"Previously, sir, yes. You see, our rate structure was moulded in a period and more or less fixed in a period before this new medium of transportation came along; therefore there is now an artificial condition."

THE CHAIRMAN: Pardon me, but what does Mr. Fairweather mean there? He says in the case of certain competition, the value of service drops down to the cost of service. Does he mean that without providing any compensation to the railways?

MR. BRAZIER: Yes. I think he is referring there to traffic which is now carried on truck competitive rates, for instance.

THE CHAIRMAN: Maybe he is. In respect of that traffic, the railways say they get not only the cost of service, but something in addition.

MR. BRAZIER: Something slightly above.

THE CHAIRMAN: Mr. Fairweather seems to think there that under certain circumstances there might be a further drop, does he not? ^{He says,} ^{competitive} "If you have a free/economy, the value of service immediately drops down to the cost of service."

MR. BRAZIER: I think, probably, without trying to --

THE CHAIRMAN: Does he not mean that the railways

make nothing at all because they could not hope to get back any more than the actual cost of their service?

MR. BRAZIER: I think it depends on what they include in the cost of service.

THE CHAIRMAN: I am trying to find out what Mr. Fairweather is referring to.

MR. BRAZIER: I would be inclined to think that he is suggesting there that the cost of service is in fact the over-all cost of service.

THE CHAIRMAN: Oh, I see.

MR. BRAZIER: Which would include their out-of-pocket costs plus something for their fixed expenses, and maybe something for profit. But it approximates the cost of the service.

COMMISSIONER ANGUS: Mr. Brazier, I think there is a little bit of danger of our slipping into giving two different meanings to the value of service. Might I clear that up by an example? Suppose the value of service of moving a given commodity from A to B was \$10 at a time when there was no truck service between those points. Suppose trucks then come in, and are ready to take that commodity from A to B for \$8. Would you say that the value of service was still \$10, or that the value of service of rail transportation had become \$8?

MR. BRAZIER: I would be inclined to say that it had now become \$8.

COMMISSIONER ANGUS: So should I. But I think that is what is meant by the value of service being the competitive rate that the railways have to meet.

MR. BRAZIER: I would be inclined to agree with that, except that the railways have spoken of this value of service particularly in regard to the traffic which they handle still under monopoly conditions. I think therefore the definition of value of service is slightly different

if they have a monopoly condition.

COMMISSIONER ANGUS: It would still remain \$10 in the example I gave.

MR. BRAZIER: Yes.

THE CHAIRMAN: When they use these competitive rates, they talk then of the cost of service plus. Do they not seem to put to one side the value of service?

MR. BRAZIER: Yes, they do to a certain extent.

THE CHAIRMAN: Is that not what they do? They say that the rule is that the competitive rate must not be less than the cost of service?

MR. BRAZIER: Yes. But I think probably we have all been guilty of using that term.

THE CHAIRMAN: Pardon me, the additional cost.

MR. BRAZIER: The out-of-pocket cost.

THE CHAIRMAN: Of that particular service.

MR. BRAZIER: I think there was evidence before the Commission that even these truck competitive rates which are in effect return to the railway much more than their out-of-pocket expenses.

THE CHAIRMAN: You say they do now?

MR. BRAZIER: Yes. I think one of the witnesses, if I recall the evidence correctly, said that they were all above their actual out-of-pocket costs of rendering the service. I think that probably is true.

THE CHAIRMAN: You have no complaint on that score such as we have heard other people express, that these competitive rates may be too low. You do not say that?

MR. BRAZIER: I think undoubtedly there are some that probably fell into that category; but I would be inclined to agree that, particularly on the long haul, competitive rates, they perhaps return much more than their out-of-pocket expenses. I think that is probably logical.

THE CHAIRMAN: Pardon me, the words you are using are "out-of-pocket costs".

MR. BRAZIER: Out-of-pocket costs. I think that is probably logical if we bear in mind that the railway is undoubtedly a cheaper form of transportation for bulk commodities in carload lots than the truck is. Therefore if they are merely meeting truck competition they are probably getting something over and above their out-of-pocket costs.

I further suggest that the fear of the railways that placing their rates on a cost of service basis will drive away from them the low rated traffic is not sound. At page 58 of the C.P.R. brief Part I it is stated:

"If all traffic were to bear its all-inclusive cost, many changes in rates would be necessary. The rates on traffic which are higher than the all-inclusive cost of moving that traffic would have to be reduced. The rates on traffic which are lower than the all-inclusive cost of moving that traffic would have to be increased because the over-all level of railway costs must be returned from the total traffic moving. It is obvious that the total volume of traffic now moving on Canadian railways would be materially lessened. For example, transportation costs are a small proportion of the selling price of silk but are a relatively high proportion of the selling price of coal. It therefore follows that if transportation costs of silk are increased it will have little effect upon the selling price

of the silk, thus the demand for silk will not thereby be reduced. On the other hand, an increase in the cost of transportation of coal can have material effect on the selling price of coal, thus the demand for coal would be reduced."

In my cross-examination of Mr. Fairweather I put to him the case of the Norfolk and Western Railroad in the United States. This is one of the most successful railroads in the United States from a financial point of view and yet the great bulk of its traffic is coal. Actually I think I have seen figures, my lord, suggesting that approximately 95 per cent of its traffic is coal. Here we have a railway that is carrying practically nothing else but a low rated commodity so that the low rated commodity must cover the over-all costs of operating that railway.

THE CHAIRMAN: Can you tell me how the rates are based on this coal?

MR. BRAZIER: I have never made a study of the rates charged by that particular railroad.

THE CHAIRMAN: It would be useful if we knew more about it. You say the road carries almost nothing but coal. It must be moved profitably or otherwise it would not operate.

MR. BRAZIER: Mr. Carson has just suggested to me that density of the traffic is probably one of the big factors permitting it to operate fairly successfully.

COMMISSIONER ANGUS: Mr. Brazier, is it a long haul for the coal or a short haul?

MR. BRAZIER: I think by Canadian standards it would be a relatively short haul; up to 500 or 600 miles is probably the maximum.

MR. EVANS: I have not any idea what the haul would be.

MR. BRAZIER: I took that from looking generally at a railway map of the United States.

I have not placed before this Commission any suggested amendment to the Railway Act in order to effect this change in the rate-making procedure since I think it can be done by simply adding into Section 325 after the words "reasonable rates" the words "in relation to cost of service." Therefore that section would read:

Notwithstanding the provisions of Section 3 of this Act the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates in relation to cost of service" . . . Then the section would continue as it is now.

THE CHAIRMAN: Do you argue anywhere that this changeover would be of special benefit to British Columbia shippers?

MR. BRAZIER: Yes.

COMMISSIONER ANGUS: Have you given consideration to the possibility of rates fixed on that principle killing some of the traffic altogether, for instance, potatoes?

MR. BRAZIER: I think there would undoubtedly be an adjustment of the traffic that passes over the railways.

COMMISSIONER ANGUS: If this cost of service you are speaking of in any case comes to exceed the value of service then you just have to stop the traffic and let the stuff stay where it is.

MR. BRAZIER: That is right. That may require some adjustment in the Canadian economy, but we are suggesting if it is done slowly over a period of years the

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over-all benefit will be much greater than the occasional losses there may be to one section or another.

COMMISSIONER ANGUS: The over-all benefit may take the form of transferring the potatoe growers of the maritimes to some other occupation in British Columbia.

MR. BRAZIER: That is a possibility.

It may well be that the railways do not know what their costs are today although there was an indication given in Mr. Fairweather's evidence that over the past years the Canadian National Railways have made a great number of cost studies. We know that the Interstate Commerce Commission has in fact made and published a great many such studies so that it is not impossible for the Canadian Pacific Railways to do likewise. After such studies have been made over a period of two or three years, it should be possible to ensure that all new rates are made on the basis of costs and that gradually the existing rates are adjusted.

COMMISSIONER ANGUS: Would you retain any statutory rates?

MR. BRAZIER: I was going to speak to that finally. I am going to take the position that all rates should come under the jurisdiction of the Board of Transport Commissioners or the regulatory body.

THE CHAIRMAN: Then you are going to concede that this would apply to flour and grain moving to Vancouver from the prairies?

MR. BRAZIER: Oh, yes. Is your lordship referring to --

THE CHAIRMAN: Export.

MR. BRAZIER: Yes.

THE CHAIRMAN: You concede that?

MR. BRAZIER: Yes. While it is not my intention to repeat all the arguments put forward by British Columbia which seem to us to favour the adoption of the cost of service principle, I would like to make some comments with reference to the evidence given before you by Professor McDougall which evidence is found at page 17795 and the following pages in Volume 94 of the Transcript. To begin with Professor McDougall makes this comment:-

"Railways in new countries like Canada would not have been built up nearly as early as they were if they had been compelled to make their rates upon a purely cost basis."

In this part of his evidence, my lord, Professor McDougall is criticizing the adoption of this principle. This statement would have been more accurate, I submit, if he had said that railways would not have been built up without very generous support from the public treasury. I doubt very much whether a method of pricing of rates in those early days ever entered into the picture in connection with the expansion of railway services except in a very cursory sort of way.

Professor McDougall in his evidence restates the time-worn argument in favour of differential pricing in the field of transportation. His statement found at the bottom of page 17796 is:-

"Well, I think the most important reason - -"
(That, my lord, is the reason why it should not be adopted)
" - - is that goods vary greatly in
their demand for transportation."

I think it is more proper to state that goods do not demand transportation but that people demand goods and part of the cost of the goods so demanded is the cost of transportation. If the total cost of goods including transportation exceeds the price which people are willing to pay, then there is no effective demand at that price and the goods will not be moved. In some cases the cost of transportation is a large factor in the final total cost to the consumer -- in others a small factor. It is quite true in the latter case that the 10% change in transportation cost may only cause a small change in the final price of the goods, but this argument in support of differential pricing falls down, I submit, in two respects: one, the volume of traffic on which rates can be increased without appreciable change in final costs is such a small fraction of the total that any surplus revenue derived from this traffic can only have a negligible effect on making up losses which supposedly arise from the carriage of heavy bulk traffic; and two, the demand for low value goods is relatively inelastic as a rule and therefore not affected by changes in price to the same extent as highly finished goods. It therefore does not follow in my submission that this traffic would be reduced to a mere trickle if it were made to bear its full costs. Professor McDougall is very careful not to indicate the particular segments of traffic carried by the C.P.R. which would be affected by this change in pricing of the rates. It appears, he feels, on much safer ground to advance this hypothetical argument.

COMMISSIONER ANGUS: While the demand for low value goods may be relatively inelastic, I suppose there

is also a possibility of that demand being satisfied from some alternative source of supply if the cost from some area goes down again?

MR. BRAZIER: Yes, and I would submit, Dr. Angus, that that would result in a general over-all economic benefit, that the goods are being obtained from the cheapest source of supply.

Professor McDougall seems to think that the adoption of the cost of service principle would give a rigidity to the rate structure. We have at no time suggested that the cost of service principle should be applied rigidly and we have not done this simply because of the difficulty of determining costs with accuracy and because also it would seem not unreasonable to assume that the mark-up on costs or, in other words, the profit should vary somewhat from one class of commodity to another. Professor McDougall suggests that if the value of service principle is "correctly applied" it would assure that each commodity bears the average variable costs attributable to its movement. It seems to me the whole basic question being faced at this time in connection with pricing is who is to determine what principle is to be applied and secondly, whether the principle finally chosen has been correctly applied. Even if the value of service principle is a satisfactory basis who knows whether the railways are applying it correctly in setting their rates?

Professor McDougall further states that in his opinion he believes that there is no half way between the two pricing policies under review. While we do not think that this is necessarily so we submit that it is highly irrelevant. The whole question at issue is

whether the railways are to be allowed to continue to price pretty much as they see fit or whether they must endure some restrictions in their pricing policy in the interest of the country as a whole beyond that now exercised by the Board of Transport Commissioners in fixing the upper limit beyond which they cannot go.

THE CHAIRMAN: Pardon me a moment, just to go back a little, I understand that the principle you are advocating, according to what you say, is not that the cost of service should be used rigidly. That is right, isn't it?

MR. BRAZIER: That is right.

THE CHAIRMAN: For two reasons, you say. In the first place it is hard to determine, there is the difficulty of determining the cost. Now then, if you concede that difficulty, does that mean a never-ending contention before the Board as to what the real costs were?

MR. BRAZIER: Well, I think, my lord, that some satisfactory formula could be - -

THE CHAIRMAN: It seems to me it would be a very difficult and very long drawn-out question in many cases, wouldn't it?

MR. BRAZIER: It would be in the beginning, I quite appreciate the possibility of that.

THE CHAIRMAN: Not only at the beginning but varying all the time according to other costs that go up or go down in the country.

MR. BRAZIER: Yes, and I think in finally determining the cost you would have to make some allowance that there was going to be a movement one way or the other for costs.

THE CHAIRMAN: Then if you did arrive at what you think a reasonable adjustment of that sort on account of the difficulty of obtaining accuracy, then you would allow for a consideration of value of service over and above that.

MR. BRAZIER: Some profit over and above that.

THE CHAIRMAN: Because you say:-

"....it would seem not unreasonable to assume that the mark-up on costs or, in other words, the profit...."

MR. BRAZIER: Yes.

THE CHAIRMAN: "....should vary somewhat from one class of commodity to another".

MR. BRAZIER: Yes.

THE CHAIRMAN: So then your basis would be an undetermined cost of service plus something for the value of that service varying between commodities.

MR. BRAZIER: Yes, which would be - -

THE CHAIRMAN: Is that right?

MR. BRAZIER: I think that is stating^{it}/fairly well there, my lord, but I think that is just the opposite of what we have today.

THE CHAIRMAN: What have we today?

MR. BRAZIER: They start with the value of service and then they test it to see if it covers their average yield.

THE CHAIRMAN: Yes, I am just trying to find out for the moment exactly what you do want.

MR. BRAZIER: In the studies that were made by the Board and the railways in respect to the movement of Alberta coal to Ontario points they there deter-

mined the variable costs and then added something for profit, and fix a rate on that basis. I am suggesting that could be done - -

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(Page 22278 follows)

THE CHAIRMAN: But what you say is, if I understand you rightly, that the rate for transporting various commodities would vary above the cost basis according to the value of that commodity; is that right?

MR BRAZIER: Yes; that the Board could give consideration---

THE CHAIRMAN: So then it is a blend, what you are advocating is a blend, is it, of cost and value?

MR BRAZIER: That is what it is essentially, because I am only too willing to admit that you cannot rigidly apply the cost of service, but it should be made the basis of the rates.

THE CHAIRMAN: Yes, but when you are talking of a basis, it seems to me that that should be something as definite as possible, shouldn't it?

MR BRAZIER: Yes, and I think in due course it could be made as definite as possible.

COMMISSIONER ANGUS: Mr. Brazier, could we define the difference between your position and that of the railways as perhaps not being as great as it seemed to be? As I understand it, you say minimum rates should depend on cost, and that the profit should then be distributed somehow, but perhaps on a principle not very different from that of value of service. The railways say the minimum rates should be based on out-of-pocket cost plus something, and that the other income that the railways need should be distributed according to the value of service principle. Now, is there such a very big difference between profits as you think of it in your proposition and the other income which the railways need as they think of it in theirs? I mean, don't both those phrases, profits in one case and the other income that is needed in the second case, add up to being a return on capital?

MR BRAZIER: That is right; I think that is quite correct; and the more I have studied our proposition as against the railways' present method, I have come to the conclusion that it is just a difference of approach rather than something fundamental.

COMMISSIONER ANGUS: Well, is it much more than a difference in terminology?

MR BRAZIER: You say is it much more?

COMMISSIONER ANGUS: Is your difference of approach much more than a difference in terminology?

MR BRAZIER: Well, I would say yes, in that at the present time, although the railways speak of testing and determining their out-of-pocket cost, I suggest that they actually do not do that in the practical rate-making policy from day to day. At the end of the year they may come along and test the rate as against the yield, but they do not actually start by determining what their costs are.

COMMISSIONER ANGUS: Well, you share a general fear that has been expressed by so many people from the provinces, that the railways go below their out-of-pocket costs.

MR BRAZIER: Oh, yes.

THE CHAIRMAN: Have you anything on which to base that besides a fear? Did you attack any particular reason for---

MR BRAZIER: No, I do not think so. Mr. Fairweather said that they had made some studies -- that is the only thing I think there is in the whole record -- in which he had afterwards tested some rates in effect and found that they did not cover their cost of service.

COMMISSIONER ANGUS: Mr. Evans has told us that under the Act today the Board of Transport Commissioners could, and they think should, disallow any rate that was not

compensatory.

MR BRAZIER: Yes, I heard Mr. Evans make that statement.

COMMISSIONER ANGUS: That in substance is what you are asking for, but---

MR BRAZIER: In a positive way. But, as I recall it, my lord, the only intimation we had that there were certain rates which were below the cost of service was in the evidence given by Mr. Fairweather, who said that he had, after they had been in effect, tested these rates; but Mr. Jefferson was quite frank in stating that the rate was put in effect and then it was tested as against an average yield. Well, certainly that is quite a different thing from testing it as to costs.

Professor McDougall refers to average variable costs or out-of-pocket costs as the floor below which the rate fixed on the value of service principle must not go. I think it would be more accurate if he had said should not go since the railways operate independently in this field of pricing and who is to know that they do not price when forced below this floor. As a matter of fact we have evidence from Mr. Fairweather to the effect that he has examined a number of rates in effect in this country in which the railways were not recovering their full out-of-pocket costs. I suggest to this Commission that Professor McDougall very nicely confuses the argument by replacing individual costs by aggregate costs, for example, when he says:

"the cost of service must provide the floor below which the rate cannot go."

THE CHAIRMAN: What do you mean by saying that Professor McDougall very nicely confuses the argument? He was giving evidence there, he was not arguing.

MR BRAZIER: Well, I would be inclined to say that a great deal of his evidence was in fact argument, my lord.

THE CHAIRMAN: Well, you say he very nicely confuses the argument.

MR BRAZIER: Yes.

THE CHAIRMAN: Very nicely -- do you mean on purpose?

MR BRAZIER: Well, I am not suggesting that he was doing anything improper or anything like that, my lord.

THE CHAIRMAN: You say:

" . . . very nicely confuses the argument by replacing individual costs by aggregate costs, for example, when he says:

'the cost of service must provide the floor below which the rate cannot go.'

MR BRAZIER: I am suggesting that here he is not speaking of individual rates but only rates in the aggregate.

THE CHAIRMAN: That is what you object to, of course.

MR BRAZIER: Yes.

THE CHAIRMAN: That is an improper way of consideration. It is the individual rates according to commodities, is it?

MR BRAZIER: Yes.

THE CHAIRMAN: I mean the individual costs according to commodities.

MR BRAZIER: I think it would have to be broken down that closely.

THE CHAIRMAN: That should be the basis?

MR BRAZIER: Yes. Certainly I do not think it is feasible to break it down by shipments at all, individual shipments; but I think they would have to take the system-

wide costs---

THE CHAIRMAN: For instance, the cost of carrying a ton of silk so many miles compared with the cost of carrying a ton of some other cheap commodity.

MR BRAZIER: Coal?

THE CHAIRMAN: Coal, the same number of miles; there would be different costs in each case.

MR BRAZIER: Yes.

THE CHAIRMAN: Might not the cost of carrying the silk be cheaper than the cost of carrying the coal?

MR BRAZIER: The cost of carrying the silk? I would doubt it very much.

THE CHAIRMAN: You would doubt it?

MR BRAZIER: Yes.

THE CHAIRMAN: Well, we do not know.

MR BRAZIER: No.

THE CHAIRMAN: Anyhow, in each case you would have the commodity govern; you would not take any general statement of cost on the whole operation.

MR BRAZIER: Oh, no.

THE CHAIRMAN: It is according to each commodity.

MR BRAZIER: It has to be broken down in many different commodities carried by the railways.

THE CHAIRMAN: Would that apply, then, to the various classes of freight set up by the Board?

MR BRAZIER: Yes -- you mean under the standard classification, class one and class two?

THE CHAIRMAN: Yes, each one to be based to ~~begin~~ begin with on the cost.

MR BRAZIER: Yes.

COMMISSIONER ANGUS: Are you thinking in terms, Mr. Brazier, of equalized rates or differential rates according to the density of traffic and so on? The so-

called out-of-pocket costs might be high where the traffic density is low. Now, what is to be the cost of carrying a commodity? Is it the average cost of carrying that commodity, taking account of all movements in Canada, or should the rate be fixed haul by haul according to the different costs in the different places?

MR BRAZIER: We said it should be on a system-wide average.

THE CHAIRMAN: A what?

MR BRAZIER: System-wide average.

THE CHAIRMAN: Of what? Costs?

MR BRAZIER: Of the commodity.

THE CHAIRMAN: Of the commodity?

MR BRAZIER: Yes.

COMMISSIONER ANGUS: Are you quite sure that when Mr. Fairweather spoke of some rates being below out-of-pocket costs he did not mean out-of-pocket costs on the particular haul?

MR BRAZIER: Oh, I think probably he did there, yes. I think he was examining at that time particular movements.

COMMISSIONER ANGUS: And you yourself are asking that the carriage on low-density lines should be below out-of-pocket costs?

MR BRAZIER: Yes, it will have that---

THE CHAIRMAN: Would your principle if put into force still allow competitive rates?

MR BRAZIER: Oh, yes, because the railways have told us they are the lowest cost form of land transportation there is.

THE CHAIRMAN: No; I am talking of the basis, cost and value and so on, value of service, the nature of the commodity and all those things.

MR BRAZIER: Yes, it would still permit it.

THE CHAIRMAN: You are considering all that?

MR BRAZIER: Yes.

It is quite evident that the railways, by practising differential pricing, may gain the required profits and at the same time force out of business incipient competition. But it does not follow that it is in the public interest that they should be allowed to continue to do so.

Further on page 17811---

THE CHAIRMAN: Pardon me a moment. Differential pricing -- does that mean competitive rates?

MR BRAZIER: Yes; the system now followed.

THE CHAIRMAN: When you say

" . . . may gain the required profits and at the same time force out of business incipient competition",

is that another way of saying that rates should not be any lower than is necessary to meet competition?

MR BRAZIER: No. What I am merely saying there is that at the present time the railways can drop their competitive rates down as far as they want; they can drop them out so low that they can cut out or prevent any competition entering into the field.

THE CHAIRMAN: Provided they nevertheless remain compensatory to the railway; I mean, isn't that---

MR BRAZIER: Well, that is the principle Mr. Evans has stated, that they are unreasonable if they go below that; but I suggest there is no definite test today, and that some of them do go---

THE CHAIRMAN: Drive out the truck competition?

MR BRAZIER: That they go below the compensatory nature, in an attempt to drive out the competition.

THE CHAIRMAN: Have any of those cases occurred to your knowledge, that is to say, that the pricing by the railways was so low that incipient competition was defeated, either it never grew or if it had ever grown it was put out of existence?

MR BRAZIER: I have not any examples I could give your lordship. I am just stating that it is a possibility under the present system of differential pricing, that it can be done if the railways wish. I am inclined myself to think probably a lot of these pick-up and delivery rates that the railways have are inclined---

THE CHAIRMAN: At the same time you have told us that you are not opposed in general to competitive rates; you have told us that.

MR BRAZIER: Yes.

THE CHAIRMAN: And competitive rates are those which provide for the additional cost of that particular traffic plus a contribution to the revenues of the railway.

MR BRAZIER: That is right.

THE CHAIRMAN: Isn't that so?

MR BRAZIER: That is right, my lord.

THE CHAIRMAN: Then nothing that you say here is to be taken as cutting into that?

MR BRAZIER: No, not at all.

Further on page 17811 Professor McDougall argues that the return on the investment and income taxes should be treated as a cost factor. While it may be admitted in the economic sense profits or return on investment and also income tax are a cost which must be borne by the users of transportation if they hope to retain this service, yet it appears that the C.P.R. are trying to include profits with operating costs so they can always be assured of a more or less constant amount of profits regardless of the volume of

traffic. In other words, they always want 50 odd million dollars over and above their operating costs regardless of the level of traffic.

THE CHAIRMAN: Right there don't you raise one of these questions, when you seek to have costs made the basis? You see, then some people will say, "Well, return on investment and income taxes are costs," and you say they are not.

MR BRAZIER: I say they are costs in an economic sense, but they are not operating costs.

THE CHAIRMAN: And your basis would be the actual -- if you got to the actual operating costs?

MR BRAZIER: Yes.

THE CHAIRMAN: Wouldn't you have to use that very language, then, in writing out your principle? You would have to say "operating costs" so as to make sure, or you would have the old wrangling on again.

MR BRAZIER: I have no doubt, my lord, that there would be a great deal of wrangling on this.

THE CHAIRMAN: And even if you did add the word "operating" it might still be contended that would be return on investment.

MR BRAZIER: I would prefer to leave it as open as possible for the regulatory body to ascertain those facts and decide it.

THE CHAIRMAN: Decide whether investment and income taxes are costs.

MR BRAZIER: Yes.

THE CHAIRMAN: I thought you were arguing against it.

MR BRAZIER: I am; I am arguing that it is not, but I would leave it fairly open to the regulatory body.

COMMISSIONER ANGUS: Mr. Brazier, when you speak of amending section 325 by adding the words "reasonable rates

in relation to cost of service", won't you have to define "cost of service"?

THE CHAIRMAN: Entirely, yes.

COMMISSIONER ANGUS: It must mean something.

THE CHAIRMAN: You see, if you threw it back on the Board in that general language you would have all the old argument over again, "Does that provide for income tax? Should it provide for income tax? Should it provide for this and that, for return on investment?" Unless you are going to make the Act precise, is it worth while?

(Page 22285 follows)

MR. BRAZIER: I had felt that it was better to leave a wide field of discretion to the regulatory body.

THE CHAIRMAN: Do you mean a wide field of discussion before the Board?

MR. BRAZIER: Yes.

THE CHAIRMAN: It is the hope of all concerned here that things will be more clearly defined in the future. We are asked to lay down principles to guide the Board. We are not laying down much of a principle if we throw back at the Board the same old language that has given rise to all these disputes.

MR. BRAZIER: I would be inclined to say, my lord, that if a rather drastic change such as this was made, we would have to have a number of years to work out the various factors that should be applied. I would very much hesitate, with what little knowledge of it we have, to say as to how it would effect the rate structure in tying the Board down too rigidly.

THE CHAIRMAN: But already you are arguing that the return on investment and income taxes are not part of the costs factor. You are arguing that now.

MR. BRAZIER: Yes.

THE CHAIRMAN: We cannot answer that for you; that is to say, we cannot hold an inquiry to find out the situation.

MR. BRAZIER: No. But I am merely trying to answer the argument that Professor MacDougall spent some little time in advancing before us.

THE CHAIRMAN: At this stage we are getting down to trying to find out how the Act ought to be amended and the principles we should advance for the guidance of the Board; and that means the language.

MR. BRAZIER: Yes.

THE CHAIRMAN: If we just use the language that you have quoted there, do you think we are making the Board

any wiser than it is today?

MR. BRAZIER: I think so, my lord.

THE CHAIRMAN: Right at the beginning you say here that if we do provide that the Board shall proceed according to your amendment, then you are ready to argue that income tax is not a part of the cost.

MR. BRAZIER: Yes.

THE CHAIRMAN: Suppose the Board holds against you, then what?

MR. BRAZIER: I would bow to the judgment of the Board.

THE CHAIRMAN: I beg your pardon?

MR. BRAZIER: I would bow to the judgment of the Board in that case. If those words were added, it would get away from the difficulty that there is, for instance, in the Granby Case which I cited to your lordship yesterday when the Board said, "No, we will not make any order in regard to cost of service. It is not a factor which is made a consideration as far as we are concerned in fixing the rates." In that case the company would have been able to receive that information from the railway companies, and then they have a base upon which to test their rate.

THE CHAIRMAN: What information would they receive? What ^{be} would those figures/~~that~~ the company would furnish them?

MR. BRAZIER: What they asked for was particulars of the cost of operating and servicing that portion of the line of the Canadian Pacific used in the transportation of ore from Copper Mountain to Allenby yearly during certain years.

THE CHAIRMAN: You had some statement by the railways that the cost or charge would have been sufficient.

MR. BRAZIER: The railways argued there that the information required would take six weeks to prepare and that it was unnecessary for the purpose of the Board.

COMMISSIONER ANGUS: You yourself have excluded local costs, the cost of particular hauls.

MR. BRAZIER: Yes.

THE CHAIRMAN: It is the commodity you go on.

MR. BRAZIER: But you would have, in the system-wide average, a basis.

COMMISSIONER ANGUS: Do you think you are being completely consistent, in this way? The rather hard-boiled principle that you advance that if the commodity cannot bear the real cost of moving it, then that section of the segment of the economy should be replaced by something else, might be applied to low density rates in a new territory. You might say it is premature to develop that territory until it can bear the whole cost of its development. Is that not so?

MR. BRAZIER: I am quite free to admit that the proposal is not as easy to apply where you have low density lines. There is the wide discrepancy between the studies which we were able to make as to their variable costs of Canadian railways. Our studies showed that it was almost 100%. I fairly admit that that figure is too high, and as far as the Canadian National is concerned, may be considerably too high. That factor of density of traffic does make it more difficult to apply this principle.

COMMISSIONER ANGUS: When you speak of density of traffic, are you averaging the whole of the railway system or are you taking the different parts of it separately? Each railway has told us that it has a great deal of low density mileage.

MR. BRAZIER: Our studies were based on the total traffic of the railways.

THE CHAIRMAN: On the total traffic?

MR. BRAZIER: Yes.

THE CHAIRMAN: Do you mean the total traffic in each commodity?

MR. BRAZIER: No; the traffic density of the whole.

THE CHAIRMAN: Of the whole system?

MR. BRAZIER: Of the whole system.

THE CHAIRMAN: I should just like to make sure that we are not being asked to put into the Act words which will only confuse the Board for the future-- you see what I mean-- either in respect of this particular thing or any other matter before us. Any language we use should be as definite as we can make it.

MR. BRAZIER: I would say here that it is one of those places where it should not be left ⁱⁿ/definite, but some indication should be given to the regulatory board that they are to consider the cost of service and not to ^{and} more or less exclude it/that that is to be the starting point in their rate fixing.

THE CHAIRMAN: According to your proposed amendment - I have not the exact words now before me - but it is section 325, is it?

MR. BRAZIER: Yes; sub-section 5.

THE CHAIRMAN: Where do they come in?

MR. BRAZIER: After the words "just and reasonable rates."

THE CHAIRMAN: How do they read?

MR. BRAZIER: In relation to the cost of service.

THE CHAIRMAN: You say, "enforce just and reasonable rates in relation to cost of service."

MR. BRAZIER: Yes.

THE CHAIRMAN: Nothing else?

MR. BRAZIER: Nothing else.

THE CHAIRMAN: That is the only factor you put in there?

MR. BRAZIER: That is right.

THE CHAIRMAN: Very well. I am afraid that would leave it open. You would then have to determine what in each case are the costs of service.

MR. BRAZIER: That is right.

THE CHAIRMAN: And you would not agree with certain things that Dr. McDougall says should enter into it. As to certain things he says should enter into it, you say ^{they} should not enter into it.

MR. BRAZIER: That is right.

THE CHAIRMAN: So immediately we see the difficulty.

MR. BRAZIER: Yes, but certainly no more than you have at the present time.

THE CHAIRMAN: I beg your pardon?

MR. BRAZIER: You would have no greater difficulty than you have at the present time.

THE CHAIRMAN: But we are here to try to remove difficulties. That is why we were appointed.

MR. BRAZIER: I am afraid I am a believer in the principle that rate-making can never become an exact science. Wide discriminatory power must be left with the regulatory body.

THE CHAIRMAN: . . . Perhaps you had better go on.

MR. BRAZIER: The Railway Act in its present form does not afford --

THE CHAIRMAN: Pardon me a moment. It would be easy for us, if we thought it proper to do so, to add the proviso, for instance, that return on investment and income taxes shall not be considered as part of the cost.

MR. BRAZIER: Yes. I am not asking for that.

THE CHAIRMAN: You do not ask us to do that?

MR. BRAZIER: No.

THE CHAIRMAN: Although you say they are not part of the cost, you would not ask us to go that far?

MR. BRAZIER: No.

COMMISSIONER ANGUS: Would it not meet most of what you want if what Mr. Evans says is implicit in the Act were made explicit, by saying that the Board of Transport Commissioners shall disallow any rate that was found to be non-compensatory?

MR. BRAZIER: I think so.

THE CHAIRMAN: You told us that they would, anyway. That is what you said, is it not?

MR. EVANS: Yes.

COMMISSIONER ANGUS: Mr. Brazier says he would be satisfied.

THE CHAIRMAN: I do not suppose Mr. Evans could object to such a thing being put in the Act if he says it is there.

MR. EVANS: Oh, I would; for other reasons entirely.

THE CHAIRMAN: For other reasons?

MR. EVANS: Yes.

THE CHAIRMAN: Not for these reasons, though. We shall hear them later.

MR. BRAZIER: You see the difficulty we are getting in.

The Railway Act in its present form does not afford the shipper any test of the unreasonableness of the rate other than the fact that it must not be discriminatory when compared to rates for the same or similar commodities over the same lines. In circumstances where monopoly conditions exist, i.e. where there is no other means --

THE CHAIRMAN: Pardon me, but that does not apply to standard rates fixed by the Board. The first thing the Board does is to fix standard rates.

MR. BRAZIER: Yes.

THE CHAIRMAN: And they are the ceiling.

MR. BRAZIER: They are presumed to be just and reasonable.

THE CHAIRMAN: If the Board has properly performed their duties, those rates are just and reasonable rates.

MR. BRAZIER: Yes; but which carry five per cent of the traffic.

THE CHAIRMAN: Yes. You are talking of rates which are always lower than that.

MR. BRAZIER: Yes.

THE CHAIRMAN: What do you say?

MR. BRAZIER: That there is no test.

THE CHAIRMAN: Of whether or not --

MR. BRAZIER: There is no test as to the reasonableness of those rates.

THE CHAIRMAN: Except for a comparison, is that it, between localities?

MR. BRAZIER: No. The Board will not consider that comparison between localities.

THE CHAIRMAN: The Act says that the rate must not be discriminatory.

MR. BRAZIER: Over the same line.

THE CHAIRMAN. Yes, over the same line; no, the Act says:

"No toll shall be charged which unjustly discriminates between different localities."

MR. BRAZIER: That is the discrimination section. But there are two tests, or supposed tests of rates:

that they are just and reasonable and that they are not discriminatory. I say, as a matter of fact, under the way the present Act operates, the first test is of no value to the shipper. Provided the rates are not discriminatory, he will not get any relief because his rate is different from the rate charged in some other place.

THE CHAIRMAN: I suppose the first answer would be this: "The Board has authorized us to charge a dollar, and we are only charging 90 cents. Therefore it cannot be said to be unjust and unreasonable." Is not that the first answer?

MR. BRAZIER: I do not think that anybody would suggest that the standard mileage rates fixed would be considered just and reasonable if all the traffic moved on those rates. They are only just and reasonable for the traffic that moves on them.

THE CHAIRMAN: Of course.

MR. BRAZIER: Which is five per cent. Certainly if all commodities were travelling at that rate, if the whole traffic was handled on the same rate, they would not be just and reasonable rates.

THE CHAIRMAN: The Board fixed them with the possibility of the Railways having the authority and the right to charge them 100 per cent if they want to.

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MR. BRAZIER: But not with any expectation that they will.

THE CHAIRMAN: They are fixed by the Board, and it is the duty of the Board to fix and maintain just and reasonable rates, is it not?

MR. BRAZIER: That is right.

THE CHAIRMAN: How can you in any case say that a rate which is lower than that fixed by the Board is unjust and unreasonable

MR. BRAZIER: I find it very difficult, my lord --

THE CHAIRMAN: Otherwise, than that it gives an advantage to one locality as against another. That is the only test. I am not saying that it should remain so.

MR. BRAZIER: In order to say that a rate that is below the maximum that is fixed is therefore just and reasonable, you have to presume that the Board expects all traffic to move on the higher rate.

THE CHAIRMAN: What else can you say?

MR. BRAZIER: If all traffic moved on those rates, the return to the railways would be so great that I do not think that the Board would hesitate for one moment in reducing those rates.

THE CHAIRMAN: When that condition of affairs arises, of course the Board will have to consider it. But at the present time the Board has fixed certain rates.

MR. BRAZIER: Yes.

THE CHAIRMAN: And has said, "Here is what you are authorized to charge." What more can any shipper say than, "This rate is too high"? Then the answer is, "The Board has authorized us to charge it." What would you answer to that?

MR. BRAZIER: Under the present Act, it is very difficult to make any answer.

THE CHAIRMAN: I see.

MR. BRAZIER: Unless you prove that it is discriminatory.

THE CHAIRMAN: Then how would you change the Act in that respect?

MR. BRAZIER: I suggest that the adoption of the cost of service would remove that difficulty.

THE CHAIRMAN: And that would result in standard rates, which never would be changed.

MR. BRAZIER: No. I think standard rates are devised essentially for traffic that travels just now and again and they are not devised for all the heavy bulk traffic which the railway handles.

THE CHAIRMAN: There may be some way, but I do not see how you would operate the Act at all. Would you abolish the standard rates?

(Page 22295 follows)

MR. BRAZIER: No. They should be higher because they only affect a small portion of the traffic which just travels from time to time, but you would have to have your commodity rates below for the movement of the bulk commodities and the great bulk of your traffic.

THE CHAIRMAN: Are we not asked by certain people to suggest that commodity rates should be made class rates?

MR. BRAZIER: I think that suggestion has been made, that a number of ^{the} present commodity rates be established --

THE CHAIRMAN: Go on, then.

MR. BRAZIER: In circumstances where monopoly conditions exist, i.e. where there is no other means of transporting the shippers' goods other than by railway, the shipper is afforded no protection in respect to the rate charged him for the carriage of his goods, with the one exception that it must not exceed the maximum class rate applicable. Under the present regulations, it is of no value for the shipper when complaining to the Board that a rate is unfair to prove that the railway makes an inordinate profit on cost, say 100%, 200% or even 500%.

The Canadian Pacific Railway Company expressed in their submission (page 64) and also through Mr. Jefferson's evidence, at page 13908, their view on what constituted just and reasonable rates in the following terms:

"In order for rates to be just and reasonable for the railways, movement of all traffic must be sufficient to pay operating expenses and taxes and to provide a reasonable return on the capital invested in the railway enterprise."

In other words, if the mass of all rates yield sufficient revenue to meet the requirements of the Canadian Pacific Railway Company, then it cannot be said that the rates are too high. I submit on the other hand that because of the extremes of variation existing within the freight rate structure and, also, because of the fact that part of the freight rate structure is called upon to bear losses which may arise from the operation of the Passenger Department, l.c.l. rates, express rates, and competitive rates, or in fact from any rate which is unremunerative, many of the rates may well be unjust and unreasonable as between themselves.

Value of service is defined on page 62 of the Canadian Pacific Railway submission as follows:

"Within the upper limit set by the over-all railway costs and the lower limit set by out-of-pocket costs, value of service is the determining factor."

Then at page 16203 of the transcript, Mr. Jefferson agrees that the following is a correct statement of his conception of the value of service principle:

"Under the value of service consideration must be given to the compensatory nature of the rate. The rate is compensatory if it returns something more than out-of-pocket costs which are the additional costs incurred by the railway in handling any particular traffic."

It is my submission that there is a vast difference between the value of service principle as enunciated by the C.P.R. and the actual practice of rate-making in force in Canada today.

If the value of service were, in fact, confined

to a variation of the profit margin contained in the rates according to the ability of the particular traffic to bear the surcharge, I should not be nearly so concerned. However, it is my submission that such is not the case. The true application of the value of service principle involves, in the first instance, the determination of what are the out-of-pocket costs; and, in my submission, my cross-examination of Mr. Jefferson -- extending from page 16216 through to 16243 -- proved conclusively that the Canadian Pacific Railway Company does not as a matter of practice ascertain what its costs are, and, in fact, has no practical means of knowing such costs. In consequence, the value of service principle as enunciated by the railway is not adhered to in the practice of day to day rate-making.

The Canadian Pacific Railway Company stated in its brief, and it was confirmed by Mr. Jefferson at page 16217, that competitive rates were judged as to their compensatory nature not by reference to cost but by reference to average yield. By reference to pages 16235 to 16243 it will be seen that variations in yield exist depending on the type of traffic as great as ten is to one. With the variation in yield extending over such a wide range, it appears to me inevitable that setting rates on system averages of yield will produce some rates substantially below costs.

COMMISSIONER ANGUS: Is the argument there not roughly this, that if the average yield is giving sufficient revenue then it must be above average cost, and therefore if the yield of any particular rate is above average yield it too must be above average cost?

MR. BRAZIER: Undoubtedly that is their argument.

COMMISSIONER ANGUS: What flaw do you find with that?

MR. BRAZIER: Simply that there is such a variation in the rates which go into the making up of the average that unless they were weighted to see whether or not the majority of the traffic was travelling on rates say five or six times the average you would not know whether the lower ones were in fact below cost.

COMMISSIONER ANGUS: If I mark students' examination papers there is an enormous variation between the worst and the best, but if the average was above the passing line, and I took a particular student and said he was above average would it not follow he had passed?

MR. BRAZIER: Yes, I see your point there.

COMMISSIONER INNIS: Does Mr. Jefferson mean net yield or gross?

MR. BRAZIER: I think he is referring there to gross. I have not that volume of the evidence right here.

MR. EVANS: Oh, he undoubtedly does.

MR. BRAZIER: The Commission and the railways may well say, "Why is this a matter of concern to the people of British Columbia if certain rates are below costs?" In my submission it is very much a matter of concern to the people of British Columbia for this reason that it is the class rates, the commodity rates and, generally speaking, the long haul rates which, under the present system of determining the railway revenue requirements, are called upon to bear any losses which may exist within the mass of all rates and, in addition, are called upon to bear passenger losses, or losses resulting from the operation of any other department of the railway. In consequence, these rates in which the people of British Columbia are vitally interested are established at a higher level than would otherwise be the case.

COMMISSIONER INNIS: Would you turn to the bottom of page 24? You say there that Mr. Jefferson agrees that the following is a correct statement of his conception -- you do not mean by that that is your conception? He is not agreeing with you?

MR. BRAZIER: No, he is not agreeing with me.

COMMISSIONER INNIS: You do not agree with his definition?

MR. BRAZIER: He is speaking there of the compensatory nature of the rate?

COMMISSIONER INNIS: Yes.

MR. BRAZIER: I am not inclined to think that a rate is compensatory just because it returns out-of-pocket costs.

THE CHAIRMAN: He says out-of-pocket costs and something more.

MR. BRAZIER: I do not think Mr. Jefferson says that.

COMMISSIONER INNIS: He just says "something more."

THE CHAIRMAN: He does say "something more".

COMMISSIONER INNIS: You would not agree with the "something more"?

MR. BRAZIER: Well, it depends --

THE CHAIRMAN: One rate might be more compensatory than another according to how much more.

MR. BRAZIER: Yes. If you take one particular movement, or the case where a single movement is offered to the railway on one occasion, and there is just the additional cost of moving that, I do not think you can take that into out-of-pocket costs as being your test of the compensatory nature.

COMMISSIONER INNIS: In other words, you do not agree with his submission.

THE CHAIRMAN: I wonder whether you should not have drafted for us a definition of "costs". There is no reason why such a thing should not be put in the Act, the expression "costs" shall mean and include so-and-so.

MR. BRAZIER: I shall attempt to do that for your lordship --

THE CHAIRMAN: I am not asking you particularly to do it now, but do you not think it ought to be done? What we are trying to get away from is making confusion worse confounded. That must not be the outcome of our labours. We are here to clarify. Now then, you tell us at once that of course this word "cost" is going to cause a lot of argument and discussion. Some may say that income taxes are not a part of costs, that returns on investments are not a part of cost. Somebody else will say the contrary, and all that sort of thing. Can you submit to us an amendment, an interpretation of the word "costs" that you would be prepared to stand by?

MR. BRAZIER: I would think so.

THE CHAIRMAN: The word "costs" for the purpose of this Act shall mean and include so-and-so.

MR. BRAZIER: Yes. I think there would probably be a lot of disagreement with my definition.

THE CHAIRMAN: There is no use just putting general language there and saying that we will fight that out, and say that in future here is what we are going to argue. That is not clarification. I am not putting any duty on you. We would like you to think^{it}/over, and if you find any satisfactory definition or interpretation of the word "costs" and "operating costs" let us have it. It might be a good thing to put in the Act. I am not saying that it is, but it might be. I certainly think it would be a most useful thing if a principle were to be

established in that regard for the fixing of rates.

MR. BRAZIER: I think probably I should make this statement to the Commission, that we in British Columbia unlike the three other western provinces do not find too much wrong with the present Railway Act unless there is to be quite a fundamental change made in rate-making policy. We do not think the various amendments which have been suggested by the three prairie provinces, for instance, are necessary for the proper working of the Act, that a lot of the problems they have placed before you are ones that --

THE CHAIRMAN: The change you are advocating is a fundamental one.

MR. BRAZIER: Yes, but if that is not to be made then we cannot find too much the fault with the present rate-making provisions of the Act. We certainly would not want the regulatory body to be tied down too tightly. I think probably our fundamentally different approach from Alberta on this problem arose over the mountain differential case. While they were vitally interested in it they suggested it was a matter that should come before this Commission to be dealt with. As a matter of fact, they succeeded in convincing one of the Commissioners that that was the disposition the Board should make. We said that we felt there was jurisdiction in the Board of Transport Commissioners to deal with the problem and we were going to place it before them. The result was that we followed that procedure. I think that probably highlights somewhat the difference in approach we have made to this Commission from that of some of the other provinces.

THE CHAIRMAN: When I speak about defining the word "cost", I find that the word "cost" is already defined in a consolatory way for some of us, because it says that costs include counsel fees.

MR. BRAZIER: A very admirable definition.

THE CHAIRMAN: That is the only definition.

MR. EVANS: Perhaps we should ask the Commission to tax the fees depending on who wins.

THE CHAIRMAN: Well, think that over for us.

MR. BRAZIER: I will, my lord. With your lordship's permission I would like now to turn to another subject, namely:-

SEGREGATION OF PASSENGER AND FREIGHT:-

This is a subject which has received considerable attention from British Columbia both during the rate cases and during the present hearings. I must say that it was with some amazement that I heard Mr. Walker of the C.P.R. tell me that as Chairman of the Company he did not know how much C.P.R. were losing on their passenger traffic. Certainly it seemed to me that the management of such a large undertaking as the C.P.R. should have at its fingertips full information on such an important subject as this. It would appear that railway executives have adopted the view that, well, there is nothing we need do about it anyway since we can add the losses of the passenger traffic to the freight rates. Yet it seems to me that it is the first responsibility of the railway executives to know just how much of a load they are putting on the freight shippers in order to carry the passenger traffic. Probably if they were left to their own devices and were not permitted to recoup

their loss from the freight shipper, the railways would eliminate a great many of the passenger services which they are now operating.

The Canadian Pacific Railway Company give it as their view on page 124 of Part I of their submission, which was reiterated in evidence by their witness Mr. Liddy, that this information would serve no useful purpose.

It is particularly the reasons advanced by the Canadian Pacific Railway Company for their stand that I would like the Commission to examine, as being indicative of their thinking on this subject. They say, and this is in their Brief at page 124:-

"In the era when passenger traffic was the exclusive preserve of the railways, knowledge of the cost of this service was of value and of significance in rates cases. Since then air and highway transportation have grown to such an extent that it is out of the question to establish passenger rates in relation to cost of service and a separation of expenses between freight and passenger has lost much of its former significance. From a management's point of view, a passenger service income account would be in effect no more than of academic interest in face of the hard fact that the railways would continue supplying passenger service."

This to me is a most amazing revelation, for it appears to say that because the railways are compelled to meet competition in respect of the prices charged for the movement of passengers, that costs are

only of academic interest. If this theory were to be seriously accepted, it would mean that costs were of no importance where the laws of competition obtained, but only had significance under monopolistic conditions for the purpose of convincing the regulatory tribunal of the necessity of raising monopolistic rates. Here we have the strange anomaly of this railway, seeking to remain a free enterprise in a competitive commercial world, deliberately refusing to take advantage of, and employ the basic tools of competitive business.

The second reason advanced by the Canadian Pacific Railway Company for their failure to obtain and utilize proper costing information pertaining to the operation of their Passenger Department was that the results thereby obtained were largely statistical, in that a very high percentage of the costs as shown in Exhibit 180 were allocated against the Passenger Department on an arbitrary basis. It is my submission that the only reason that such a high percentage of costs chargeable against the Passenger Department is so allocated is because the railways themselves choose it to be so. Under modern methods of railway accounting as high as 70 percent of the expenses can be assessed against the respective departments, leaving only some 30 percent of common costs to be allocated on a combination of scientific bases. It was for this reason that I tendered Exhibit No. 193 to show the lengths to which the Atchison, Topeka and Santa Fe Railroad were prepared to go to obtain not only the minimum information required by the Interstate Commerce Commission, but a detailed refinement thereof for their own managerial purposes. It is vital to the life of that railroad to know the exact point at which it can afford to refuse business; and it is my submission that we will never solve the railroad problem

in this country until their management is armed with similar information.

COMMISSIONER ANGUS: Is the railway company free to refuse passenger business?

MR. BRAZIER: No, I think as a common carrier they must carry all the passengers that wish to travel. Are you referring, Dr. Angus, to a particular service?

COMMISSIONER ANGUS: No, I was referring really to your statement that it is vital to the life of that railroad (and I assume the railways) to know the exact point at which it can afford to refuse business. Is it free to use that information once it has got it?

MR. BRAZIER: As far as rates are concerned, I think it would be so. For instance, it is quite possible, speaking only of passenger rates, for the C.P.R. and Canadian railways to eliminate their passenger week-end rates. They would know whether or not it is profitable to put those rates into effect.

COMMISSIONER INNIS: If you go back to page 7, pushing that a little further, you say:

"Probably if they were left to their own devices and were not permitted to recoup their loss from the freight shipper, the railways would eliminate a great many of the passenger services they are now operating."

Now, would the Board allow them to do it?

MR. BRAZIER: No, I am referring there, if they were not compelled by the Board to maintain the service.

From what studies we had been able to make on this subject -- and I ask the Commission to bear in mind that these studies were of necessity very general -- it appeared to us that both railways were losing very substantial sums each year in the carrying of their passenger traffic. We realized that the railways were compelled by

statute to maintain this service and that in many cases the Board of Transport Commissioners had refused permission to abandon some passenger services on the ground of public convenience and necessity.

A glance at the figures for passenger revenue for the past thirty years showed that they had dropped substantially except during the abnormal years of the war. It could readily be seen that following 1920 the private automobile and the bus were taking away from the railways a very large proportion of their passenger traffic. This tendency still continues and I think we must come to the conclusion that this competition by itself will become keener and more difficult for railways to meet in future years.

Since the last war another very important form of competition has come to the fore -- namely, air travel. My own experience leads me to suggest that the air lines -- and remember that T.C.A. and C.P.A. between them cover most of the important cities of Canada, most of which are already served by two railway lines -- have made very serious inroads on long distance travel. One major airline official in the United States recently advised the U.S. railways to get out of all passenger traffic over 200 miles before they were forced out by the airlines. There can be no doubt, I submit, that the air lines will become increasingly competitive to the railways in the matter of passenger traffic. I think Mr. Cronkite filed some rather interesting figures before you the other day, showing the very substantial increase in the number of passengers and the passenger miles of the air lines in the last two or three years.

These facts would, I suggest, seem rather obvious even from a cursory study of the subject. In the year 1920 the C.P.R. had a freight revenue of approximately \$111 million

while their passenger revenues were somewhat over \$46/ million. I have taken those figures, my lord, from Exhibit 98 which was filed in the 21% case. The passenger revenues from that year on steadily declined and reached a low of \$15.6 million in 1939 against a freight revenue of \$120.3 million. Then followed the abnormal war years and in 1945 the passenger revenue amounted to \$56.8 million, as against \$233.1 million for freight revenue. Now in 1949 in spite of a slight increase in passenger fares, the passenger revenue was only \$38.2 million as against \$293.2 million of freight revenue.

THE CHAIRMAN: Mr.Brazier, we will take a few minutes off.

-- Recess.

(Page 22313 follows)

MR BRAZIER: Now it seemed to us that railway executives would be very much concerned about this problem of passenger losses. In the first place we thought that they would have complete information as to whether or not the railways were losing money on their passenger traffic and if they were how much and secondly, we probably

innocently presumed that if there was a loss on passenger traffic that the railways individually and collectively would be attempting to devise some means of reducing their loss. Surely in any well operated business management watches such matters very carefully and while I will concede that there are other businesses where one department may operate at a loss, it has been my experience that management does everything possible to rectify the situation, or at least keep the loss to a minimum. We had also read various statements to the effect that in most railways on this continent the passenger traffic was carried at a loss or at least it failed to make its full contribution to the overhead.

We were further informed in the briefs filed by both railways that very substantial savings had been made by the pooling of certain passenger traffic in 1933 and 1934. As a matter of fact the tables given by the railways indicated that the only important saving by cooperation under the C.N.-C.P. Act (\$972,000 out of \$1,189,000) had been realized by the pooling of certain passenger traffic. Then suddenly the avenue of cutting passenger losses seems to have been closed - no where else in all Canada were the railways able to find any competitive passenger traffic that could be pooled---

THE CHAIRMAN: Tell me, is there such traffic in British Columbia?

MR BRAZIER: Well, I attempted to indicate in my

cross-examination of Mr. Armstrong and Mr. Fairweather the possibility of pooling transcontinental traffic out of Vancouver, and possibly the passenger traffic out of the Okanagan Valley could be---

THE CHAIRMAN: What did they say to that?

MR BRAZIER: Well, they were both matters which the railways had studied prior to the war, and the studies had been interrupted by the war and they had not been renewed.

THE CHAIRMAN: Had not been resumed?

MR BRAZIER: No.

THE CHAIRMAN: Do you think they should be resumed now?

MR BRAZIER: Oh, very definitely.

THE CHAIRMAN: But there is nothing of a local nature in the Province of British Columbia?

MR BRAZIER: Well, except possibly the Okanagan traffic, which, outside of the transcontinental traffic, is approximately the only competitive traffic there is in British Columbia.

THE CHAIRMAN: Does that apply to rail and steamer both?

MR BRAZIER: There is no competition rail and steamer .

THE CHAIRMAN: There is no what?

MR BRAZIER: No competition in British Columbia between rail and steamer.

THE CHAIRMAN: I know, but I mean, have the two railways both considered this, the C.N.R. and the C.P.R.?

MR BRAZIER: The C.P.R. handle exclusively the traffic to V ncouver Island. They both run---

THE CHAIRMAN: No; we are talking of the Okanagan Valley.

MR BRAZIER: Yes, they both run trains in the Okanagan Valley.

THE CHAIRMAN: Do they both run boats?

MR BRAZIER: No; there are no passenger boats in the Okanagan Lake; they both run their trains to Kelowna and they have a connection between Kelowna and Penticton by bus. There are no passenger boats on the Okanagan Lake.

THE CHAIRMAN: And no freight boats?

MR BRAZIER: There are freight boats, yes.

THE CHAIRMAN: And they are C.P.R.?

MR BRAZIER: I think both of them operate a service.

MR EVANS: Barge business.

MR BRAZIER: It is barge business.

THE CHAIRMAN: The kind of co-operation you have in mind now, would that affect both boats and railways?

MR BRAZIER: Yes, but the barge services there would be relatively unimportant.

THE CHAIRMAN: So it is the railways.

MR BRAZIER: It is essentially railways.

THE CHAIRMAN: You think there is room for co-operation there and a saving?

MR BRAZIER: It would certainly seem that way, by what conclusions you can come to.

THE CHAIRMAN: Without affecting communities adversely?

MR BRAZIER: Yes. You see, at the present time, for instance, both railways out of Vancouver operate two transcontinental trains in the evening, one going to Toronto and one going to Montreal. Now, it seems to me quite possible that the C.P.R. could take the Montreal traffic and the C.N.R. take the Toronto traffic, and all the communities along the line would be served by one train.

THE CHAIRMAN: I was getting back to the Okanagan Valley situation; what might be done there?

MR BRAZIER: They run over the same line for a good part, from the City of Kelowna to Armstrong; they run over exactly the same line.

THE CHAIRMAN: There might be a pooling there?

MR BRAZIER: A pooling, yes. I mention this, and I felt it was my duty to point out in our own province things of that nature, and I am quite sure that there are similar things in other provinces.

Then suddenly the avenue of cutting passenger losses seems to have been closed - no where else in all Canada were the railways able to find any competitive passenger traffic that could be pooled and thereby reduce the expense to the railways. While realizing that there are many technical problems which an outsider cannot fully appreciate, I say emphatically that the people of Canada will find it hard to believe that there is not further possibilities for co-operation in the handling of passenger traffic which will reduce the expenses of our railways.

While the estimates of saving which I have mentioned of \$972,000 out of \$1,189,000 the original estimates and applied to the years 1933 and 1934 we had the evidence of Mr. Fairweather, who as recently as last year had checked this matter to the effect that the saving today was of the same order and might be even greater in the future. While Mr. Armstrong seemed to give the impression that there might be no saving today he did admit that the C.P.R. had made no estimate for some years - their failure to make such an estimate indicated to me, however, that they were still satisfied that the arrangement was of substantial benefit to them even today.

We found that when the C.P.R. was attempting to

justify a higher rate on grain in Western Canada the company had not hesitated to call to the attention of this Commission the fact that there was a deficiency in railway passenger revenues over expenses in the Prairie and Pacific regions alone in the year 1948 amounting to \$18,555,654. That statement shows that the total revenues from passenger traffic was only \$27,487,601. At the same time I draw to the Commission's attention that the two accounts for maintenance of equipment and transportation, accounts which can be almost wholly allocated directly to the particular branch of the rail service to which they apply, in themselves exceeded by more than two million dollars the total revenue. I submit that in the face of this evidence alone it cannot be argued otherwise than that the passenger traffic of the Canadian railways is carried at a loss at the present time, and that it is not in fact even paying its out-of-pocket expenses. My opinion in this regard is further fortified by the statement made by Mr. Fairweather when he was questioned by Mr. Commissioner Angus as to whether or not the Canadian National Railways would improve its position by eliminating its passenger service. In reply Mr. Fairweather very fairly stated that in his opinion if the passenger traffic could be eliminated completely he was of the opinion that there would be a greater reduction in expenses than in revenue.

Now this Commission can quite properly say to me "Well what can we do about the situation? Suppose the passenger traffic is carried at a loss the railways must still give the service and be reimbursed by some other branch of the traffic." My answer is simply that the railways must in the first place find out exactly what the passenger traffic is costing them each year. In other words, what is the burden which is being placed upon the freight shippers

of Canada in order to maintain the passenger service? It may be that in past years the burden has been small but I suggest to the Commission that it is now obvious that the burden is becoming very heavy. It seems to me impossible to suggest any real solution to this problem until such time as we are able to have before us evidence as to exactly what the full burden is. We must also bear in mind that in past years this burden was probably paid by most freight shippers but due to the growing number of competitive rates in effect in Canada the result is that the burden of carrying the passenger services is falling on the shoulders of an ever-narrowing group of shippers.

Surely if a very heavy burden is to be placed upon the freight shippers that in this regard the Board of Transport Commissioners would be justified in requiring the railways to prove to the hilt that no further savings can be made from cooperation in passenger services before they are permitted to pass the burden along to the freight shippers. I suggest the main reason why the railways do not seem to be concerned about their passenger losses at the present time is the fact that they are able to pass them along to somebody else. Mr. Jefferson has stated to this Commission that he did not think it was fair that the freight shippers should be required to bear the burden of losses incurred by the railways in handling mail for the Dominion Government. In this I agree with him but I say that the same reasoning applies to the losses on passenger traffic. While the Province of British Columbia has stated its opposition to railway subsidies it may be that the only final solution that can be given to this question of passenger losses is by the Federal Government paying a subsidy to the railways.

COMMISSIONER INNIS: Would you go along with Mr.

Shepard?

MR BRAZIER: Not for any more than a subsidy on passenger losses where the railways are required to maintain the service on the ground of public necessity and convenience.

COMMISSIONER INNIS: You would not go along with him to the extent to which he went?

MR BRAZIER: No.

COMMISSIONER INNIS: You remember, he suggested a subsidy to passenger losses, which is really what you have here, except that you are not so enthusiastic.

THE CHAIRMAN: What would you say was the difference between you and Mr. Shepard?

MR BRAZIER: Well, I say it should be the very last alternative to be adopted in order to meet this problem.

THE CHAIRMAN: Does he say differently?

MR BRAZIER: I think he came out, as I recall his argument, whole-heartedly for subsidies on passenger losses.

COMMISSIONER INNIS: You are not very far from that, however.

MR BRAZIER: No. I do think probably something that Mr. Shepard did not emphasize, that there is still room in co-operation to cut this down very substantially.

THE CHAIRMAN: That is all there is between you?

MR BRAZIER: That is right. I must say, it was with some regret that we even have to suggest subsidy on this matter. We do not think that offers a solution of the railway problem, but---

COMMISSIONER INNIS: Everybody talks about subsidies in the same language.

MR BRAZIER: This is a particular branch of the railway problem which may call for different treatment.

But surely this should only be done after they are

completely satisfied that there is no unnecessary duplication of railway passenger service in this country and that the railways themselves have voluntarily done all they can to cut down their losses. It should in fact be a very last resort.

This passing of the burden from one part of the railway operation to another cannot go on indefinitely and there are now definite signs that the freight payers are reaching the limit of the burden which they can bear. I have gathered the impression, whether rightly or wrongly, that railway officials generally are shutting their eyes to this problem and do not intend to do anything about it unless they are rudely awakened. I am sure that if the shareholders of the C.P.R. were told they had to bear the passenger losses there would soon be a greater degree of cooperation shown.

THE CHAIRMAN: Can you give me the reason you suggest why the railways do not take the steps you think they might take?

MR BRAZIER: I think the reason is simply that they are being able to pass the loss on to the freight shipper. They say on the one hand, "We are forced to keep these passenger services going. We must receive out of our over-all railway operations sufficient revenue to permit us to carry on. If we cannot get it from one branch we just automatically have to take it up on another branch."

COMMISSIONER INNIS: Would you have all this done by the Board?

MR BRAZIER: I think so.

COMMISSIONER INNIS: It would be under their direction?

MR BRAZIER: Under their direction.

THE CHAIRMAN: It is true we are past that stage

now, because we did the co-operation; that is what you are back to now.

MR BRAZIER: Well, I think co-operation comes into this branch, in that it provides the first avenue of approach to a solution of the problem.

THE CHAIRMAN: You mean that the Board should consider to what extent the railways have failed to co-operate; is that so?

MR BRAZIER: In this regard, yes, sir; and they should actively tell the railways where they are to co-operate. It does seem very striking that this tremendous saving was made just in regard to three passenger services in Canada, and then suddenly there is nothing more---

THE CHAIRMAN: You mean the \$972,000?

MR BRAZIER: Yes; and that is gained just from pooling the traffic from Toronto to Montreal, Toronto to Ottawa, and Montreal to Quebec.

Next, my lord, I would like to deal with the subject of Segregation of Rail and Non-Rail Income.

SEGREGATION RAIL AND NON-RAIL INCOME

It has long been contended in general freight rate cases that the other income derived from sources other than the strict railway enterprise should be taken into consideration when determining the financial need of the railway companies. As early as the Western Rates Case in 1914 this issue was raised but the Board of Transport Commissioners has consistently held against such an argument. In the judgment in the 21% Case at p.18 and following, the Chief Commissioner makes the following statements:

"Counsel for the respondents, however, contend that the so-called other income of the railway companies should be taken into account and added to the railway operating revenues in determining the financial need of

the railways for greater revenue and in fixing what the rates should be. This contention is strongly opposed by counsel for the applicants.

Generally speaking, other income when used in the railway companies' accounts now being considered may be described as income which is produced by capital investments made by a railway company in enterprises or investments other than railway transportation services."

He goes on to discuss the various sources of other income accruing to both the Canadian Pacific Railway and the Canadian National Railways. Then he finds at p.22 as follows:

"Subject to certain deductions and adjustments which should be made in respect to income taxes and interest on reserves for deferred maintenance to which further reference will be made later, in my opinion the Board should not in the present case take into account other income in fixing and determining just and reasonable rates for transportation services."

Just previously on the same page when discussing the case of the City of Ottawa against Ottawa Electric Railway Company, 59 C.R.T.C. 136, the Chief Commissioner had stated:

"The so-called other income in the Ottawa against Ottawa Electric case was all or almost all derived from activities directly connected with the transportation operation of the Ottawa Electric Railway Company."

Bearing this in mind, an examination was made of some of the investments which the C.P.R., the yardstick chosen by the Board for fixing of freight rates, had in enterprises directly connected with its transportation

operation. Following this examination I came to the conclusion that some of the investments were directly associated with the rail transportation service and the income therefrom should be included in the rail income.

THE CHAIRMAN: You say:

"Following this examination I came to the conclusion that some of the investments . . ."

Have you set those out anywhere?

MR BRAZIER: They are set out. I dealt with them in my argument before the Board of Transport Commissioners in the 8% Case, my lord, and they are set out in the judgment of the Board at page 13; that is the judgment of September 20th.

THE CHAIRMAN: At what page?

MR BRAZIER: At page 13.

THE CHAIRMAN: What are they? What are these investments?

MR BRAZIER: I set them out further in my argument too, my lord.

We also had the example before us of the treatment given by the Canadian Pacific Railway to the interest earned by the deferred maintenance fund. This fund had been charged directly to rail operations, and was held in reserve for deferred maintenance on the railway when labour and material became available, yet the railway had seen fit to include interest earned by this fund in its other income. The Board found in the 21% that this was improper, and required the interest to be credited to the rail operations, but so far as I am aware until the decision in the 21% Case this matter of dividing rail and non-rail income had been left entirely to the Company and its Board of Directors to decide.

In my argument in the 20% Case or, as it is also

known, the 8% Interim Case, I stated as follows at p.4361 of the transcript:

"I therefore wish to examine with the Board briefly some of the investments producing the so-called other income, which investments I will submit are directly connected with the transportation services rendered by the Canadian Pacific Railway and are such that they cannot be separated from the transportation services by the widest stretch of the imagination. Before doing this, I wish to urge upon the Board the argument that if the so-called other income is not to be considered when fixing a level of freight rates, then this Board must exercise an active control over the establishment of what is other income and what is railway."

Following that in my argument, I attempted to draw to the attention of the Board some of the so-called other income which I submitted should be properly included with rail income. I did not intend this list to be exhaustive but merely cited what in my opinion were rather obvious examples. This matter is dealt with in the Majority Judgment in that case commencing at the top of p.13. It is to be noted that I suggested as being directly connected with rail operations the following:

1. Communications
2. The C. P. Express Company
3. Fredericton and Grand Lake Coal and Railway Company
4. Minneapolis, St. Paul and Sault Ste. Marie
Railroad Company
5. Toronto, Hamilton and Buffalo Railway Company
6. Aroostook Valley Railway Company
7. Northern Alberta Railway Company
8. Toronto Terminal Railway Company.

THE CHAIRMAN: Have you considered further since then? Are there any you wish to add to or subtract from this list now?

MR BRAZIER: No, I haven't any.

THE CHAIRMAN: Have you anything to say about Consolidated Smelters?

MR BRAZIER: I am of the opinion, my lord, that that is truly non-rail.

I used these examples in attempting to impress upon the Board the necessity of examining the so-called "other income" of the C.P.R. closely before permitting it to be classified as "other income" and therefore to be disregarded in rates cases.

Mr. Evans has argued on several occasions during the course of these proceedings that the Board of Transport Commissioners refused to give effect to my argument---

THE CHAIRMAN: You do not include hotels?

MR BRAZIER: Well, I must confess that in my opinion hotels are rather on the border-line.

THE CHAIRMAN: On the border-line.

MR CARSON: That was not the position British Columbia took in the Privy Council last summer.

MR BRAZIER: I think if the Board was to undertake a study of this and I argued before them, I would be inclined to argue that they should be included with rail income, but I would not be surprised if the Board held otherwise.

THE CHAIRMAN: Every year?

MR BRAZIER: Every year. I think there is no doubt that you have to take it as a question of principle, and not whether they are making a profit or a loss at the particular time.

Mr. Evans has argued on several occasions during the course of these proceedings that the Board of Transport Commissioners refused to give effect to my argument when they said at the bottom of p. 13:

"Counsel for the respondents have also maintained that if other income is not to be considered in fixing a level of freight rates, that this Board exercise active control over the establishment of what is rail income and what is other income. The foregoing contention points directly to a fundamental difficulty experienced by the Board -- that The Railway Act does not in its present form give the Board authority to control the accounting procedure of the railways in the manner advocated by counsel."

On the other hand, I think it can be argued with considerable force that if the Board had not felt that it lacked jurisdiction to make this segregation of accounts, it would have done so.

(Page 22330 follows)

Mr. Evans, on his part, has argued on several occasions during the course of these proceedings that this could not be so because the Board already have the power to make such a segregation under Section 128 and Section 33(2) of the Railway Act and had, in fact, made some segregation in the 21st Judgment.

THE CHAIRMAN: Just a minute.

COMMISSIONER INNIS: Is that Section 128 or 126?

MR. BRAZIER: Section 126. That is the section requiring them to keep accounts; and section 33(2) is the section under which "the Board may order and require any company or person to do forthwith", and so on.

THE CHAIRMAN: Section 126 is just about accounts.

MR. BRAZIER: Section 126.

THE CHAIRMAN: Section 126 reads:

"The directors shall cause to be kept, and, annually, on the 31st day of December, to be made up and balanced, a true, and exact and particular account of the moneys collected and received by the company, or by the directors or the managers thereof, or otherwise for the use of the company, and of the charges and expenses attending the erecting, making, supporting, maintaining and carrying on of the undertaking, and of all other receipts and expenditures of the company or the directors."

That does not get you very far.

MR. BRAZIER: No. But they argue on that section, --

THE CHAIRMAN: That is Section 126 and Section 33(2).

MR. BRAZIER: -- in conjunction with section 33(2), which gives the Board power to require the company to do anything under the Act.

THE CHAIRMAN: They cannot make any order in consistent with the Act. They cannot change Section 126.

MR. BRAZIER: I have been of the opinion that Section 33(2) is dealing with matters before the Board on an application.

COMMISSIONER ANGUS: What you are doing is only to make the Act explicit as to what the railways in fact say it says.

MR. BRAZIER: That is right.

THE CHAIRMAN: Have you any amendment of your own?

MR. BRAZIER: No. Mr. Shepard's amendment which I refer to will correct that.

THE CHAIRMAN: You adopt that?

MR. BRAZIER: Yes.

Mr. Evans has argued that the Board had, in fact, made some segregation in the 21% Judgment. The power of the Board in this is to say the least doubtful. It is for that reason that I am supporting the amendment proposed by Mr. Shepard's argument before this Commission and which reads as follows:

- "325C(1) In the case of a company with assets other than those used or useful in operating its railway including inland and connecting coastal steamship lines, it shall be the duty of the Board, for rate making purposes, to require the segregation of those assets and income therefrom from the other assets and income of the company.
- (2) The Board shall have full jurisdiction to determine the proper segregation."

THE CHAIRMAN: After you have the segregation, then what does the Board do?

MR. BRAZIER: The Board disregards the truly non-rail income in determining the financial need of the railway on a general freight rate case.

THE CHAIRMAN: What the word "segregation" means is this. These incomes would be divided into two classes by the Board.

MR. BRAZIER: That is right.

THE CHAIRMAN: Some rail and some non-rail?

MR. BRAZIER: That is right.

THE CHAIRMAN: But then you put in the Act that certain things which you specify on page 38 must be considered to be rail.

MR. BRAZIER: Oh, no. I think that must be left to the Board to decide. They should do the deciding. The Board is the one to decide what is rail and what is non-rail and not the officials of the Canadian Pacific or the Canadian National Railways.

THE CHAIRMAN: Nor the provinces, I suppose.

MR. BRAZIER: Nor the provinces, no.

THE CHAIRMAN: Then, in the 21% Case, how far do they go towards making such a decision?

MR. BRAZIER: The only thing they said in there was that the interest which had been received on the deferred maintenance fund should be credited to the railway operation.

THE CHAIRMAN: It should be considered as rail?

MR. BRAZIER: As rail.

THE CHAIRMAN: As rail income?

MR. BRAZIER: Yes.

THE CHAIRMAN: Then did they exclude the others?

MR. BRAZIER: Yes.

THE CHAIRMAN: They proceeded as if they had that jurisdiction now?

MR. BRAZIER: In that one instance, they did; I must admit that.

THE CHAIRMAN: You are not asking for any more than that, are you?

MR. BRAZIER: Any more than that?

THE CHAIRMAN: Are you asking for anything? "

MR. BRAZIER: Just that the Act be clarified to say positively that they have that power. I do not like its being left to inference on these two particular sections which Mr. Evans has cited.

THE CHAIRMAN: You say that the 21% decision still leaves it too cloudy. Is that it?

MR. BRAZIER: Absolutely. We want an express provision in there giving that power to the Board.

THE CHAIRMAN: I see; making it necessary for them to have all the details before them of all activities?

MR. BRAZIER: That is right.

THE CHAIRMAN: So that they themselves would say, "This is rail and this is non-rail"?

MR. BRAZIER: That is right.

THE CHAIRMAN: And you would be satisfied with that?

MR. BRAZIER: Yes.

THE CHAIRMAN: And that no other direction be given to them in the Act?

MR. BRAZIER: No.

I should state at this point that I fully realize that if the rates in this country were to be established on a rate basis, the rate of return on a / segregation of these accounts would not be of great consequence, but I can quite properly suggest that there will be no change. in the manner of fixing freight rates, and that we will still have to examine the requirements of the C.P.R. in all future rate cases.

On this subject, I would like to call the Commission's attention to statements made in the Canadian National Brief at pages 97 and 98 in regard to two subjects which are included in the list on page 13 of the judgment to

which I have just referred, namely, the allocation of the express and communications activities of the railways. You will recall that the C.P.R., while they do pay over to the railway revenue - that should be "railway revenue," my lord.

THE CHAIRMAN: Instead of "company"?

MR. BRAZIER: Yes, rail revenue. It should read in this way. You will recall that the C.P.R., while they do pay over to the rail revenue the net from express operations, yet the revenue derived from money orders and other financial transactions of the Express Company are retained and paid into other income.

THE CHAIRMAN: You say that is wrong?

MR. BRAZIER: Yes,

THE CHAIRMAN: You still want to leave it to the Board to say whether it is right or wrong?

MR. BRAZIER: That is so. I am just pointing out these as examples showing why this amendment should be made to this section, because of the situation as we have it today.

COMMISSIONER INNIS: Do you not think it would be wise to instruct the Board as to what principles it ought to follow in making this division?

MR. BRAZIER: The principles that the Board itself laid down in the case against the Ottawa Electric Railway Company.

COMMISSIONER INNIS: You mean in this extract which you have?

MR. BRAZIER: Yes.

COMMISSIONER INNIS: That is very loose.

MR. BRAZIER: Yes, it is - "activities directly connected with the transportation operations".

THE CHAIRMAN: The word "directly" I do not think has any force at all there. Either it is a rail operation or it is not, in any given case, is it not? A certain operation is a rail operation or it is not a rail operation.
(page 22336 follows)

MR. BRAZIER: Some of them may be very closely connected.

THE CHAIRMAN: I mean to say, in the final result you must classify them as one or the other.

COMMISSIONER INNIS: You have no principles to recommend? It is a matter of leaving it to the Board?

MR. BRAZIER: I think it should be left to the judgment of the Board.

In this regard, the C.N.R. brief says at page 97:

"It may be said that a money order business is not strictly transportation and should be excluded from railway operations. On the Canadian National, this represents about 3% of all Express Department revenue. However, as the handling of money order business is inextricably involved in the railway organization, the revenue therefrom may be considered as incidental to transportation."

Then referring to Commercial Telegraphs at page 98 the C.N.R. brief states as follows:

"Commercial telegraph services in Canada have been developed largely as a by-product of railway operations. The commercial revenues have assisted the railways by carrying some portion of the cost of furnishing and operating essential telegraph and telephone facilities.

"There is no difficulty in accounting for the revenues from commercial business, but there would be great difficulty in separating the operating and maintenance costs as between railway and commercial

operations except on various arbitrary bases."

Just to mention one other of the items set forth on page 13 of the Judgment to which I have just referred, namely the classification of income derived from bonds in the Toronto Terminal Railway Company, support is given to the submission I made to the Board in the evidence of Mr. Cooper found at page 19083 (Volume 103) and the following pages. Mr. Evans at that point put the following question to Mr. Cooper:

"Q. I have just one other question on that subject of uniform accounting. I think I understood your evidence in connection with a question put to you by Mr. Covert as to the treatment of the income received on the securities of the Toronto Terminals Railway Company owned by the Canadian National, and I want you to correct me if I have interpreted you incorrectly. I understood you to say that, as a railway accountant, you felt that the income received by the Canadian National from the Terminals Company on the securities of the Terminals Company should go into Rail Income."

To which Mr. Cooper replied as follows:

"A. Assuming that the income statement of the Company is to be divided as between rail operations and non-rail operations, yes. I said that in my opinion the interest on the bonds of the Toronto Terminals Railway, held by the Canadian National, should go into Rail Income."

Following that Mr. Cooper goes on on the same page and the following page to elaborate the reasons why he comes to that conclusion. Now, my lord, I had intended dealing next --

THE CHAIRMAN: On that point, was evidence given on behalf of the C.P.R. to the same effect?

MR. BRAZIER: If my memory serves me correctly, Mr. Thompson stated that he was satisfied that the C.P.R. was handling the items in a proper way.

THE CHAIRMAN: Pardon?

MR. BRAZIER: Mr. Thompson, who was a witness called by the C.P.R., said that in his opinion it was quite proper for the C.P.R. to make the segregation which they made.

THE CHAIRMAN: That is to say, we can put it this way, that the C.P.R. takes one view of this matter and the C.N.R. takes the opposite view.

MR. BRAZIER: That is right. As I say, it is all part and parcel of the subject of Uniform Accounting.

THE CHAIRMAN: What is that?

MR. BRAZIER: It is all part and parcel of the subject of Uniform Accounting.

MR. EVANS: It is only fair to say that is not the whole cross-examination of Mr. Cooper. That is only one question.

MR. BRAZIER: I think I put it to the Commission that on the following pages Mr. Cooper outlines his reasons for coming to that conclusion.

THE CHAIRMAN: I suppose we shall hear about that later.

MR. BRAZIER: With your lordship's permission, and bearing in mind the timing of my argument, I am going to ask permission to turn now, rather than to

Uniform Accounting, to the question of transcontinental rates. I feel --

THE CHAIRMAN: Where will we find that?

MR. BRAZIER: Page 51.

THE CHAIRMAN: Are you skipping --

MR. BRAZIER: If time permits I shall come back to Uniform Accounting.

THE CHAIRMAN: In the intervening pages you also deal with the subject of rate base and rate of return. That is important. I have not read your argument but the subject is important.

MR. BRAZIER: They have been dealt with by other counsel. I want it understood I shall come back to them if time permits.

THE CHAIRMAN: After you have dealt with transcontinental rates will you then come back to rate base and rate of return?

MR. BRAZIER: Uniform accounting.

THE CHAIRMAN: Which one first?

MR. BRAZIER: I shall be quite pleased --

THE CHAIRMAN: In order of importance, in my opinion, I think that the rate base would be more important than uniform accounting.

MR. BRAZIER: I shall deal with that next.

THE CHAIRMAN: As I say, I have not read your submission.

MR. BRAZIER: Mr. MacPherson has dealt with it at quite some length, and I would support his views. Mr. Smith, who is to follow me, will also deal with that.

The question of transcontinental rates is one which particularly affects British Columbia, and which I feel it is necessary for me to make sure I cover in my time.

TRANSCONTINENTAL RATES

It is necessary for me to address some remarks to the question of the so-called transcontinental rates. It is with considerable regret that in this regard I must find myself opposed to the views presented to this Commission by my learned friend Mr. Frawley on behalf of the Province of Alberta, and also to the views presented by Mr. Shepard on behalf of Manitoba, and Mr. MacPherson for Saskatchewan. I can appreciate Mr. Frawley's concern on behalf of the distributors of his province with the fact that such rates exist. We would be only too happy to see his rates lowered if this were possible, yet it is a benefit rate-wise which British Columbia obtains because of its geographical position just as Alberta obtains the advantage of oil production due to its geographical location. The existence of these rates may conceivably affect some distributors in Alberta, but I submit that otherwise they are not detrimental to the economy of Alberta.

Their existence affects the Province of Saskatchewan to a much less extent and it is hard to reason why the Province of Manitoba should be in any way concerned by them. It is my submission that rate-wise Manitoba has long benefited by the freight rate structure of this country, but in spite of this they saw fit to oppose British Columbia's recent application for a removal of the Mountain Differential.

The transcontinental rates exist because of water competition between Atlantic ports and Pacific ports. They existed to some extent before the opening of the Panama Canal for traffic due to the competition of railways in the United States. Mr. Shepard at page 34 of his submission has stated:

"That transcontinental rates should not be lower than the level of the Canadian railways' most serious competition for that traffic, which is the railways of the northern United States."

I must take exception to this statement and suggest to this Commission that the sole reason for the so-called transcontinental rates either in the United States or in Canada today is the fact of water competition between the Atlantic and Pacific ports. I do not think it can be said at this time that the United States railways and the rates which they charge have any great effect on the level of transcontinental rates as they exist in Canada.

We filed before this Commission an exhibit showing the commodities shipped from Montreal via the Panama Canal to Vancouver in May of last year. I might say that is Exhibit No. 27. By comparing the rates shown in that exhibit we can immediately see that they are considerably lower than the corresponding rail rates for the same commodities.

I should like, if I may, to give a few examples from that exhibit. We find that the rate on canned goods, for instance, was 75 cents a hundred as against a then rail rate of \$1.33.

THE CHAIRMAN: What was the water rate?

MR. BRAZIER: The rail rate was \$1.33.

THE CHAIRMAN: What was the water rate?

MR. BRAZIER: The other rate was 75 cents a hundred. We have to bear in mind that to the ocean rate there are certain additional charges that have to be added, and which are not present when the goods are shipped by rail. There are charges for Montreal wharfage, marine

insurance, Vancouver terminal charges and Vancouver trucking charges. The exhibit shows they amount to 24 3/4 cents per hundred pounds.

THE CHAIRMAN: That has to be added?

MR. BRAZIER: To the 75 cents, so that you have an effective rate by water of \$1 as against a rail rate of \$1.33. That rail rate today is \$1.40. I have no information as to what the current ocean rate is.

COMMISSIONER INNIS: What is the comparable American rate?

MR. BRAZIER: I could not tell you offhand.

THE CHAIRMAN: Did Mr. Shepard give it?

COMMISSIONER INNIS: I do not think so.

MR. BRAZIER: No, I do not think so. I will see if I can find it. You wish the current American rail rate?

COMMISSIONER INNIS: Yes.

MR. BRAZIER: Then we have items like glucose, a considerable quantity of which was shipped on that particular vessel. Thereagain the ocean rate was 75 cents and the rail rate was \$1.53. There was a very considerable quantity of iron pipe shipped, about 2,400,000 pounds. The ocean rate was 46 cents as against a rail rate of \$1.20.

THE CHAIRMAN: What is the cost today?

MR. BRAZIER: I am sorry that I have not been able to obtain --

THE CHAIRMAN: Did you not tell us the other day that the rail rate had ousted ships from competition?

MR. BRAZIER: No, the competition is --

THE CHAIRMAN: Still going on.

MR. BRAZIER: The reports are that the first ship that sailed since the opening of navigation in the

St. Lawrence was oversold.

THE CHAIRMAN: I had in mind something that comes from England. What was it?

MR. BRAZIER: That was the question of market competition on pipe.

THE CHAIRMAN: What was the commodity?

MR. BRAZIER: It was iron pipe.

THE CHAIRMAN: The same thing.

COMMISSIONER INNIS: Can you give us any indication as to the closest possible range? I suspect what you have given us is the widest possible range.

MR. BRAZIER: They are all very substantial differences. Here is household cleanser which you would not think of particularly as an item that might be shipped. There were 82,000 pounds of it, and the rate was 80 cents. The rail rate on that was \$2.65.

COMMISSIONER INNIS: That is much more extreme than the others.

THE CHAIRMAN: That is from eastern Canada.

MR. BRAZIER: That is from Montreal to Vancouver.

COMMISSIONER INNIS: What is the least in variation?

MR. BRAZIER: There is one here, lubricating oil. There were 40,000 pounds of that on board, \$1.25 against \$2.09. They are all pretty much of the same order. The only one I cannot tell about is automobiles.

THE CHAIRMAN: Perhaps after lunch you may be able to give us more light on that. It is time to adjourn.

---The Commission adjourned at 1.00 p.m. to resume at 2.45 p.m.

Ottawa, Ontario
Thursday, May 11th, 1950.

A F T E R N O O N S E S S I O N

MR. BRAZIER: I might say, Mr. Chairman, Dr. Innis asked this morning about the American rail rates. I spoke to one of the traffic men in the C.P.R. and he says he has the tariffs here and he will be pleased to give me some of them so that I will place them on the record and you can have them.

I was referring at the closing to this Exhibit 27 which was filed, and I have looked it over carefully in the interval and I find that there is a very wide margin between all of the rates, and that applies not only to commodities which were shipped in carload quantities, the ones I was quoting this morning, but also those with less than carload quantities. For instance, there were 50 pounds of steel screen and door hinges on board. The ocean charge was \$5.00 which was the minimum, whereas the rail rate was \$6.68. That is about as close as any of them come to one another. I also wish to mention to the Commission a report - -

COMMISSIONER INNIS: What difference in the time?

MR. BRAZIER: I have a report here which I was just going to read to the Commission which would give some indication of that. It is a report which appeared in the "Montreal Gazette" last Tuesday morning. It reads:-

"Oshawa-built automobiles are being moved from Montreal to Vancouver by steamship, General Motors of Canada Limited announced today.

"The trip by way of the Panama Canal takes from four to six weeks compared with ten days by rail, officials said. But they estimated a shipping-cost saving of \$80 a car.

"The first shipment left Montreal during the week-end. The S.S. Riverside carried 70 passenger cars, 20 from General Motors. The S.S. Oceanside is scheduled to leave Montreal next week with a similar cargo.

"Automobiles are being moved by transport trailer from Oshawa to the Montreal dockside, officials said."

Then they go on to point out that automobiles are also being shipped up the Great Lakes and taken by trailer from Fort William to some of the Prairie Provinces.

THE CHAIRMAN: What date is that Gazette?

MR. BRAZIER: That is May 8th, sir. It is Monday morning's paper.

THE CHAIRMAN: Are any British cars reaching British Columbia by sea?

MR. BRAZIER: In very considerable quantities.

THE CHAIRMAN: They are?

MR. BRAZIER: Yes, I think it had already been stated, it had been reported I think in the "Evening Post" that last year there were more Austin cars sold in British Columbia than Fords, the ratio being about three Austins to two Fords which I think is some indication of the inroads British cars are making in B.C. markets. It is also interesting to note the wide variety of commodities which were shipped by water to Vancouver. Even after making allowance for additional

wharfage and handling charges which are involved in ocean shipping as against rail shipping, it is shown that the rates are substantially below the transcontinental rail rates. For example, the rates on canned goods after allowing for additional charges were \$1.00 per hundred pounds as against a rail rate of \$1.40. It should be \$1.33 at that time. It is now \$.1.40. It is therefore obvious that if the railways of this country wish to obtain any of this traffic for themselves that they must institute rates which are below normal rates.

It is rather unfortunate that such rates have been given a special name since they are absolutely the same as other competitive rates, whether water or truck competitive. We earnestly urge upon this Commission that they be treated exactly the same way and subject to exactly the same regulations as other competitive rates. To treat them otherwise would be to again establish a differential against British Columbia, and that we would most strongly protest.

THE CHAIRMAN: You don't agree with Alberta's contention, do you?

MR. BRAZIER: No, I don't in this regard.

THE CHAIRMAN: That in the case of all transcontinental rates the Board should consider the effect on distributors at the points farther east like Calgary?

MR. BRAZIER: That is right.

THE CHAIRMAN: What do you say to that? Do you say that these distributors in Calgary and elsewhere are not prejudiced by the lowering of these rates?

MR. BRAZIER: I think undoubtedly it does assist distributors in Vancouver to cover a wider territory.

THE CHAIRMAN: Eastward?

MR. BRAZIER: Eastward to Calgary. Of course they are not in any better position than the Calgary distributor is from that point east, in that the Calgary distributor can always get the transcontinental rate to Vancouver plus the rate back to Calgary.

THE CHAIRMAN: Who can get that, do you say?

MR. BRAZIER: They can always obtain that.

THE CHAIRMAN: The Calgary distributor?

MR. BRAZIER: Yes.

THE CHAIRMAN: Well, if that combination of two rates is less than the direct rate from Toronto to Calgary, have they not some grievance?

MR. BRAZIER: If it is running - -

THE CHAIRMAN: I say, if that combination of two rates is less than the direct rate from Toronto to Calgary.

MR. BRAZIER: They get that combination then if it is.

THE CHAIRMAN: I know they get it, but that is not what they want. They want to get a direct shipment from Toronto at a rate which will not compel them to take the back hauls, isn't that it? I see now. The two agree now, do they?

MR. BRAZIER: No, probably the normal rate to Calgary would be higher today than the combination of the two rates.

THE CHAIRMAN: That is what Mr. Frawley told us, I understand.

MR. BRAZIER: I think that is quite correct.

The shipper in Calgary is actually above the combination rates, the combination of the two.

THE CHAIRMAN: The shipper in Calgary?

MR. BRAZIER: Or the receiver in Calgary, whoever paid the freight on that shipment, would take advantage of the combination.

THE CHAIRMAN: He could take advantage of it?

MR. BRAZIER: Yes.

THE CHAIRMAN: But he wants to be in a position where -- you mean in direct shipment?

MR. BRAZIER: Direct shipment.

THE CHAIRMAN: Without going to Vancouver?

MR. BRAZIER: No, they don't care to go to Vancouver and ship it back again. He gets the benefit of the combination on the direct shipment to Calgary if it is lower.

THE CHAIRMAN: Does that apply to all commodities?

MR. BRAZIER: Yes, as far as I know.

THE CHAIRMAN: What then have you to say generally of Mr. Frawley's assertions, of his grievance?

MR. BRAZIER: I say that while he may have had a grievance, if railways are to be permitted to meet competition in this manner, there is nothing you can do about this particular instance of competitive rates. They should be treated exactly the same as all other - -

THE CHAIRMAN: Are you admitting then that these competitive rates do injure the Calgary distributors in any way, but the injury must be put up with on account of the general good?

MR. BRAZIER: They are at a slight disadvantage. I wouldn't say it injures them.

THE CHAIRMAN: A slight disadvantage?

MR. BRAZIER: A slight disadvantage as to Vancouver distributors. I would not go so far as to say it injures them.

THE CHAIRMAN: When you say slight disadvantage, do you mean geographically?

MR. BRAZIER: Yes, that there are points that Calgary firms might normally serve in Eastern British Columbia, whereas the Vancouver distributor can probably lay his goods down at this point cheaper than the Calgary man can.

THE CHAIRMAN: You see, Mr. Frawley, I think, put his case this way, that if the rate from Toronto to Calgary is, we will say, \$2.00 (we are using big figures because they are easier to handle), and then you fix a transcontinental rate from Toronto to Vancouver of \$1.00, by that fact there, you see, the Calgary distributor suffers. But, he says, if the difference were something like this, if the rate from Toronto to Calgary were \$1.10 and the other one \$1.00 then there would not be the same discrimination. Those are the figures he uses.

MR. BRAZIER: The principle would remain the same, my lord. It would just be a question of meeting it, and I don't know how you could ever decide where the rate to Calgary should stop, whether it should be \$1.10 - -

THE CHAIRMAN: You admit that the Calgary distributors are prejudiced to some extent?

MR. BRAZIER: To some extent.

THE CHAIRMAN: By what is going on, although they are nearer to Toronto?

MR. BRAZIER: Yes.

COMMISSIONER ANGUS: When you say that these rates are exactly like competitive rates, other competitive rates, I suppose you would agree that they are more likely to give this rate to long haul traffic than truck rates are which are normally competing?

MR. BRAZIER: Yes, and particularly because I think they are more obvious.

COMMISSIONER ANGUS: Now, Mr. Frawley has asked for special conditions rather more onerous than that, and he is asking for them in relation to other competitive rates because of these long-and-short-haul difficulties, and you say, I think, that these extra safeguards are not necessary?

MR. BRAZIER: Are not necessary, sir.

THE CHAIRMAN: They are not necessary?

COMMISSIONER ANGUS: Or not desirable.

THE CHAIRMAN: Yes, has anybody a note of where Mr. Frawley raises this point?

MR. EVANS: Mr. Frawley does not differentiate between these rates and other competitive rates.

THE CHAIRMAN: Oh, yes, he does.

MR. EVANS: His Section does not.

THE CHAIRMAN: He says that in addition to the usual requirements of compensation, he adds two or three more.

MR. EVANS: Yes, they apply to any competitive rates, not only transcontinental rates.

THE CHAIRMAN: Where are they anyhow?

MR. EVANS: Section 314A.

THE CHAIRMAN: I am talking about Mr. Frawley.

MR. BRAZIER: I think that is true. Mr. Frawley has changed his ground somewhat from his original - -

THE CHAIRMAN: Yes, but I am asking the question, where there is reference to this in Mr. Frawley's argument.

MR. BRAZIER: I have not a copy of it, my lord.

THE CHAIRMAN: Because he sets out several requirements in addition to the usual requirements to competitive rates. I want to see what Mr. Brazier thinks of those.

COMMISSDNER ANGUS: Would not one of the requirements be that rates should be fair to the intermediate points?

THE CHAIRMAN: We have it here in writing.

COMMISSIONER ANGUS: Fair and reasonable to the intermediate points.

MR. BRAZIER: Yes.

COMMISSIONER ANGUS: And that would not apply to the other competitive rates?

MR. EVANS: His Section makes it quite clear that it does, Section 314A.

THE CHAIRMAN: It is here on page H-5 of his argument, this amendment he proposes to Section 314A. Now, he calls it the "Long-and-Short-Haul Clause" and he gives the three conditions which apply to all competitive rates: that there is actual and compelling competition and so on; that the toll at the competitive point is not lower than necessary to meet the competition; then that the toll at the competitive point is such as to warrant a reasonable expectation that as a result of charging the competitive toll, net earnings will be

greater than they would be in the absence of such toll.

Then he says:

"Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter than for a longer distance within/^{which} such shorter distance is included shall at all times be just and reasonable when compared to the toll for the longer distance."

That is not in the usual competitive rates. Do you say it is?

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(Page 22352 follows)

MR. EVANS: No, I did not say so. I said Mr. Frawley does not make any distinction; he applies the same principles in his amendment.

THE CHAIRMAN: You mean to say that^{what}/he is asking for applies to all competitive rates?

MR. EVANS: Yes.

THE CHAIRMAN: I did not realize that.

MR. BRAZIER: I was under the impression that Mr. Frawley was trying to distinguish somewhat from --

THE CHAIRMAN: He calls it a long and short haul clause.

COMMISSIONER ANGUS: Is this perhaps true, that what Mr. Frawley said would apply not only to transcontinental rates but to any rates that gave rise to long and short haul difficulties? There might be other rates that did so, but I think that his rule as to the long and short haul rates was different from his rule as to competitive rates, that did not involve that sort of thing.

MR. BRAZIER: And I think his long and short haul is directed particularly to the transcontinental rates.

THE CHAIRMAN: He classifies it this way: he calls this part of his argument "the long and short haul rule", and then he goes on to bring that into the transcontinental rate -- that is what he deals with -- Panama Canal competition -- then he gives the history.

The history of the transcontinental competitive rate structure is dealt with at pages so-and-so, and that he deals with. Now, he may have other long and short haul cases in mind too, of course. Then he winds up by submitting this clause, which he calls the long and short haul clause, 314A. But I think he told us

distinctly that he did not mean all these conditions to apply to the usual competitive rate which is granted say in Ontario between points and makes the carriage less than it would be in Alberta. Isn't that right?

COMMISSIONER ANGUS: My recollection is that when I suggested that the rules were approximately the same Mr. Frawley said they were not, but that is subject to the fact that there might be long and short haul difficulties elsewhere that would fall into this draft. Whether he had those immediately in mind or not --

THE CHAIRMAN: The usual requirements of competitive rates, that they be compensatory and not lower than necessary, and he adds this, that in the case of the long haul they should be just and reasonable when compared to the toll for the longer distance. Then with respect to tolls of the kind referred to in subsection 1 existing at the date of the coming into force of this section, the company shall make application to the Board for approval of such tolls, and until the determination of such application such tolls shall be deemed to have been approved. Well, that is just to bring them all to the Board. But the principal new element he introduces there is that about the short and long haul, that is, the points Calgary and Vancouver, for instance.

MR. BRAZIER: Well, our submission is simply, my lord, that the transcontinental rates should be treated subject to the same rules as any other competitive rate that the railways are --

THE CHAIRMAN: Yes, with the requirements of compensation and so on.

MR. BRAZIER: Yes.

THE CHAIRMAN: Without any regard being had to the interests of intermediate points of destination?

MR. BRAZIER: Well, all rates under the Act must be just and reasonable, and that is sufficient --

THE CHAIRMAN: Yes, the Act now says all rates must be just and reasonable and there must be no discrimination between localities. That is already in the law, and you think those provisions sufficiently cover Mr. Frawley's case?

MR. BRAZIER: I do, yes.

THE CHAIRMAN: No toll shall be charged which unjustly discriminates between different localities.

MR. BRAZIER: We have submitted that the Board of Transport Commissioners should have greater control over competitive rates to ensure that no such rates are published which involve a loss to the railways requiring them to recoup such loss from other traffic.

Mr. Shepard has placed on record an amendment to the Act, section 325B, which I would support in that regard, without going into the details of that amendment.

It does seem that only by forcing each media of transportation into the field of operation in which its costs are lowest can we possibly provide for the proper division of the transportation effort. So I say that if ships can carry goods to the Pacific Coast at rates the adoption of which would result in the railways receiving less than their variable costs for hauling such traffic, then such traffic should be shipped by water. Further, it is necessary that some one else than the railways should have the final say as to whether or not such traffic is being hauled at a loss. I do not think it is necessary for me to argue that for such long hauls water transportation is undoubtedly the cheapest form available. I suggest that this must be

so because of the very low rates which they are charging for this traffic.

COMMISSIONER INNIS: I find it a little difficult to understand the basis used by the water transport in setting rates. Surely the rates cannot be very much below the railway, otherwise they would not be charging as they might in their own interest.

MR. BRAZIER: Well, any published rates I have seen, Dr. Innis, are substantially below the rail rates, and of course they must give some consideration to the factor of time involved.

COMMISSIONER INNIS: Well, I wondered whether the whole question of inventory costs and interest on inventory was a factor which was being overlooked.

MR. BRAZIER: I think it is something that they must take into consideration in fixing their rates.

COMMISSIONER INNIS: A question would be, of course, how far the railways keep above the water rates or how far the water rates keep below the rail rates, but I would think there would be some relation between them.

MR. BRAZIER: Well, I found from what knowledge I have been able to get of the ocean rates that it was very difficult to determine.

COMMISSIONER ANGUS: Is the suggestion that if the shipping situation became such that there were frequent and regular services that could be counted on for time, then this gap between the water rate and the railway would have to be closed to some extent, there would just be the matter of the difference between ten days and six weeks, and if that is what we are to anticipate we should then expect the transcontinental rates to come down or traffic to be lost.

MR. BRAZIER: Yes. I can quite foresee that even the present level of transcontinental rates will have to be lowered by the railways if they expect to get any part of that traffic; but I think your proposition, Dr. Angus, might overlook the competition amongst ships, too. A regular service, if it is making too much money, is likely to find a tramp steamer coming in and undercutting its rates.

COMMISSIONER ANGUS: That would cut them lower still.

MR. BRAZIER: Yes.

COMMISSIONER ANGUS: But I meant that if service becomes more frequent you would expect the rates to come down.

MR. BRAZIER: Yes, that is quite right.

At the same time I must call the Commission's attention to the fact that there are only a very limited number of commodities included in the transcontinental tariffs 1(h) and 1(f). I do not think that anybody can suggest that the railways have been remiss in their duty to revise and change this tariff whenever conditions were such that the competition did not exist, or the degree of competition changed. The rates have been substantially increased over their pre-war level and many items which were formerly included in these tariffs have been eliminated. It is reasonable to suppose that in due course the water competition will increase and many other items will again have to be included in the tariffs. From the shipping rates as shown in the exhibit previously referred to, it would appear that the railways are not attempting to meet this competition in full. The water rates are in fact substantially lower but I submit that once the Board of

Transport Commissioners has fixed the lower level of such rates, and this will involve much study, then the railways should be left free to meet such competition as they see fit. It then becomes a matter for managerial decision since the establishment of such competitive rates cannot be unduly detrimental to any other part of Canada.

I am inserting the word "unduly" there.

THE CHAIRMAN: Can a thing be detrimental without being unduly? You want to add the word "unduly"?

MR. BRAZIER: Unduly detrimental.

The question of transcontinental rates had been before the Board of Transport Commissioners on a number of occasions and on each occasion the Board has found that they were justified and were not unjustly discriminatory as against other traffic. In this regard, I wish to refer this Commission to some of the judgments of the Board of Transport Commissioners and as to what they had to say on this subject. It is to be noted that there is not one member of the Board who, at any time to my knowledge, has suggested in any judgment that the so-called transcontinental rates were not justifiable.

COMMISSIONER ANGUS: Do you see any disadvantage to the railways, Mr. Brazier, in having to disclose their costs to the Board of Transport Commissioners at a time when competitors do not have to disclose theirs? Does not that present the shipping people with information as to the rate which the railways cannot meet?

MR. BRAZIER: Yes, frankly, that is a problem I had not faced at all.

COMMISSIONER ANGUS: I mean, I do not know in a practical way whether that would matter or not.

MR. BRAZIER: Certainly if they go before the

Board of Transport Commissioners it would have to become public, and when we attempted to get costs before, the railways have been rather opposed to giving them to us, and I presume very much for that reason, that they do not want competitive forms of transportation to get them.

As far back as the Western Rates Case reported in 17 CRC 123 this matter was considered by the then Board of Railway Commissioners.

THE CHAIRMAN: What year is that, when you say "as far back as the Western Rates Case"?

MR. BRAZIER: That is 1914.

At page 153, the Chief Commissioner says:

"So far as water competition is concerned it has been recognized over and over again that the extent to which water competition shall be met is in discretion of the railway. The Board has also held that it is the privilege of a railway in its own interest to meet water competition and further that it is not the privilege of the shipper to demand less than normal rates because of such competition unless the railway in its own interest chooses to meet it. The principle of water competition has been again recognized practically by all rate regulating Commissioners."

THE CHAIRMAN: There was no Panama Canal then, was there?

MR. BRAZIER: No, it was not open for traffic at that time.

THE CHAIRMAN: What was the water competition? The lakes and canals?

MR. BRAZIER: And competition going down the Atlantic coast, a short rail haul across the Isthmus, and up the Pacific coast, and I think some water competition

around the Horn.

He then cited two judgments of the Board which had upheld this contention, namely, Canadian Oil Company against G.T.C.P. 12 CRC, p. 351 and the Blind River Board of Trade case 15 CRC, p. 146.

Further in the case of Dominion Sugar Company against Grand Trunk et a. also found in 17 CRC at p. 240 Mr. Commissioner McLean made these significant remarks at page 247:

"Water competition is . . . a justification of rates lower than those normally effected by rail if there is such competition either actual or potential. The extent to which the rail carrier may recognize or refuse to recognize water competition has been dealt with in Blind River Board of Trade against Grand Trunk et al."

This matter was also dealt with by the Board in its judgment in the General Freight Rate inquiry of 1927 reported in 17 J.O.R.R. 131.

THE CHAIRMAN: As a matter of fact, of course, we know these things. That is what Mr. Frawley is complaining about, the very things you are speaking of. Do you want some change made in the law on account of these things?

MR. BRAZIER: I am arguing, my lord, that the same reasoning applies.

THE CHAIRMAN: That there should not be any change?

MR. BRAZIER: Yes.

At page 136 the Chief Commissioner had the following to say:

"The Transcontinental Rate Scale has a very definite purpose, and one which should be commended rather than criticised. While it gives rise to some anomalies, nevertheless such are not by any means to prevail against the benefit of the system as a whole. It is true that some localities east of Vancouver are compelled to pay on certain commodities transportation rates greater than those charged for the long haul."

THE CHAIRMAN: That is the real point -- not the same rates but greater.

MR. BRAZIER: "But the real issue in that regard is whether the charge for the short haul is reasonable and fair. The two sets of rates are based on different principles, as is well recognized, and are not to be judged by the same standard.

"Transcontinental carriage of freight has been much affected by reason of the cheaper, although much more lengthy and circuitous water route furnished by the Panama Canal. In instances wherein rapid delivery is not essential, the competition of the latter route is more formidable. The establishment of this route has deprived railways of much traffic, and wherever they can meet such competition by making low transcontinental rates, they should be encouraged to do so, and schedules framed for that purpose should not be disturbed.

"A criticism of some force, however, developed through the complaint that by reason of the transcontinental rate to Vancouver

and the rate eastward therefrom, certain distributors in Alberta find themselves at a disadvantage as compared with distributors in Vancouver. The instances of such were not impressive and are not to be met by alteration or elimination of the transcontinental rate. They do not touch the principle of transcontinental rates, which under present conditions needs no justification."

THE CHAIRMAN: Now, does not that case show?-- and I suppose it has not been altered in any way by more recent decisions.

MR. BRAZIER: Not at all.

THE CHAIRMAN: Does it not show, then, how the Board has interpreted for itself the meaning of those words "just and reasonable"? That is, all rates must be just and reasonable.

MR. BRAZIER: Must be just and reasonable.

THE CHAIRMAN: It seems to me they have here said that these particular rates, although they may militate against some intervening points, are not for that reason alone unjust and unreasonable?

MR. BRAZIER: I think that is the argument the Board used.

THE CHAIRMAN: Then it is no use sending that same language back to them again. The point is whether there is -- of course, Mr. Frawley is not here. This is really the reverse of your problem -- whether some other language might not be found, if necessary and advisable, to put a limitation on those rates, expressly in the Act say that they shall --

MR. BRAZIER: Well, of course, we in British Columbia would say that the Act should be left as it is,

with the one or two suggestions.

THE CHAIRMAN: Because Mr. Frawley's test would be the same as he has now -- at all times to be just and reasonable.

MR. BRAZIER: For the reasons given above, we submit that there is no reason why this Commission should find that transcontinental rates are not justified and beyond dealing with them as with other competitive rates no new regulations are required.

Mr. Evans points out to me, which I might mention to the Commission, that in that judgment the Board of Transport Commissioners was dealing with these rates on their merits; it was not just a discussion of the law at all.

THE CHAIRMAN: Yes, I know they were.

COMMISSIONER ANGUS: They did not deal with the possibility of their being non-compensatory?

MR. BRAZIER: No, that was something that was not discussed at that time.

THE CHAIRMAN: Dealing with them on the basis of their being fair and just to other people -- certain distributors in Alberta.

MR. BRAZIER: I say, beyond dealing with them as with other competitive rates no new regulations are required. We are quite satisfied to have them judged on the basis of the criteria set forth by Mr. Walker in his evidence, namely (a) that the rates must never be less than the out-of-pocket costs plus a margin above that, and (b) the rates should not be lower than is necessary to meet competition. Certainly no reason has been advanced before this Commission which would require that the transcontinental rates should be established on any different basis than that upon which the

truck competitive rates between Calgary and Edmonton are established. It does seem to me that the fact that the goods travel over the same line of railway is no reason to discriminate against them as competitive rates. There are in fact in British Columbia many non-competitive rates which are much higher for a distance, say, equal to that between Calgary and Red Deer, than the truck competitive rate between Calgary and Edmonton.

I could not draw any distinction in these rates because --

THE CHAIRMAN: You say that whether the haul is long or short the same principle would apply.

MR. BRAZIER: Yes, whether along one line of rail or --

THE CHAIRMAN: Apart from Mr. Frawley's example of these transcontinental rates to Vancouver, have any other long haul rates been put before us that you remember -- long and short haul, I mean?

MR. BRAZIER: No, not to my knowledge, sir.

COMMISSIONER ANGUS: I think one or two examples were mentioned in the course of the evidence, as I remember it, but of a minor character.

MR. BRAZIER: As far as I followed Mr. Frawley on that, he had in mind pretty much these transcontinental rates.

Now, my time, my lord, is almost up, and I would ask that my section dealing with uniform accounting be read into the record. There is one thing I would like to say in regard to that, that it would appear to me from past experience that the railways cannot agree on this question; although they agree on the principle they cannot agree on the detail of it, and I think that the

duty should be placed clearly upon the Board of Transport Commissioners to see that uniform accounting is adopted and that it be their responsibility to act as a judge in the case and not merely as a referee between the two railways as to what should be done on that particular subject.

I would also ask to have read into the record the section on the subject of depreciation, which is a subject that British Columbia dealt with in several of the rate cases. We strongly urge the Commission that depreciation should be on a straight line basis. I have referred to the evidence which we presented to the Board of Transport Commissioners in the 8% Case and some evidence that we gave before this Commission on the subject which leads us to the belief that the only sound method of computing depreciation for railways in Canada is on a straight line basis.

Then I have a section which I also ask to have read into the record on rate base and rate of return.

THE CHAIRMAN: Are you for it or against it?

MR. BRAZIER: Perhaps I might just read my concluding paragraph.

"In conclusion on this subject I would urge this Commission that inasmuch as the rate base of the Canadian Pacific Railway Company is completely unproven and that it would take separate hearings or a specific examination of the Company's accounts and properties in order to prove the rate base, that no finding thereon either in principle or in detail should be made at this time."

THE CHAIRMAN: Does that mean that the Board

should be left free to adjust rates as it thinks proper?

MR. BRAZIER: Yes, that is essentially what we think. It should be left as it is now --

THE CHAIRMAN: Whether according to requirements from time to time or --

MR. BRAZIER: If the Board comes to the conclusion at some future date that it should go on a rate base, then let the Board decide that at that time, but leave the widest possible area of discretion to the Board in this regard.

COMMISSIONER ANGUS: Are you asking us, because a separate hearing would be necessary, to recommend that a separate hearing should not be held?

MR. BRAZIER: No. I would just leave it to the railways to raise the issue the next time or at any time they wish to before the Board.

THE CHAIRMAN: On the whole I may say this, that I think I have gathered that there is not much you want us to do affecting the Board.

MR. BRAZIER: No; as far as British Columbia is concerned, I would say so, although we do not take issue with a number of the things that have been proposed by some of the other provinces. We find that it has operated---

THE CHAIRMAN: You did concur originally in the representation of the other seven provinces, didn't you?

MR. BRAZIER: Oh yes, I think with considerable success, but the Board has now decided a number of the principles, and those problems will not arise again in the future.

COMMISSIONER INNIS: Having removed mountains, it can remove anything.

MR. BRAZIER: And it is quite true that the Board had to deal in both these last two rate cases with this very difficult problem of depreciation. The I.C.C. in the United States have studied that problem for many years, and it was a new problem for this Board to deal with, and of course there was dissatisfaction both on our part and on the part of the railways because of the length of time it took to have them decide that particular problem.

THE CHAIRMAN: Has your province entered this appeal taken against the recent decision of the Board?

MR. BRAZIER: Yes.

THE CHAIRMAN: To the Government?

MR. BRAZIER: Yes, we have.

THE CHAIRMAN: Is there available anywhere the grounds of appeal?

MR. BRAZIER: I have not them here, but I could get them.

THE CHAIRMAN: Have you got them, Mr. Covert?

MR. COVERT: Yes, I think we have them.

MR. BRAZIER: I think briefly I can state the ground for appeal, that there should have been an apportionment made of dividends and surplus in the same way that the Board apportioned fixed charges. That is the big issue, as far as I recall.

THE CHAIRMAN: Well, we need not take your time with it, because it is a general application.

COMMISSIONER INNIS: Just one moment. On page 57 you have put the trans-continental rates in a very preferred position. I think Mr. Jefferson's evidence indicates quite clearly that trans-continental rates were almost always pretty much above what might be thought of as the non-compensatory line, partly because you have to

take into account the long haul itself.

MR. BRAZIER: Yes.

COMMISSIONER INNIS: But that does not disturb your---

MR. BRAZIER: I do not know that I quite follow you, Dr. Innis. I say that generally speaking meet the compensatory test.

COMMISSIONER INNIS: Well, as I remember Mr. Jefferson's evidence, they more than met it in practically all cases, because of this long haul factor.

MR. BRAZIER: Yes.

COMMISSIONER INNIS: And they really are not in the same position as competitive rates, which are---

MR. BRAZIER: No, but I can foresee the time when, with competition becoming greater, the railways may be forced to lower those down to a point where they may not be of a compensatory nature, and we would be quite satisfied if at that time the Board said to the railways, "You cannot handle that traffic anymore, because you have to put a load on some other traffic."

Thank you.

(Sections of the argument taken as read into the record follow on next page). -

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Uniform Accounting.

It would seem to be the view of all parties that the institution of uniform accounting is desirable and in consequence I will not further argue the merits of this matter. There is, however, one important side issue arising out of the position taken by the Canadian Pacific Railway Company on this question of uniform accounting. If my summation of the position of the Canadian Pacific Railway on this subject is correct, it is this:

"Uniform Accounting is desirable and should be instituted under rules and regulations promulgated by the Board of Transport Commissioners and, if the regulations pertaining to uniform accounting extend to the subject of depreciation then the user basis of depreciation should be adopted; and, in the event that the depreciation on the user basis is not adopted, then each railway should be permitted to account for depreciation by the means deemed most appropriate by the railway in question."

There is inherent in this position a much greater flow than is reflected merely by the adoption of different means of providing for the accrual of depreciation, and that is that, unless it is made mandatory that both railways provide for depreciation on the same categories of assets, there can be no effective comparison of the operating expenses. It is the value of such a comparison of operating expenses that, in my view, makes the adoption of uniform accounting worthwhile.

In order that the Commission may have very clearly before them the point which I have in mind, I will elaborate this question a little further. The equation for comparative purposes of depreciation charges computed at varying

percentage rates is comparatively simple and even the equation of depreciation charges computed by different methods is not insuperable. However, where one railway company provides for amortization of certain classes of depreciable assets by means of depreciation charges and the other railway company provides for this expense by charging either the cost of the retirement or replacement to operating expense as and when it occurs, all comparability between the operating expenses of the two systems is lost. It is this very situation with which the Commission is faced by the diametrically opposed submissions of the Canadian Pacific Railway and the Canadian National Railway system.

The Canadian Pacific Railway Company advocates the adoption of depreciation by means of the application of the user method to both rolling stock and depreciable road property. The Canadian National Railway system urges the adoption of depreciation by the straight-line method for rolling stock and replacement accounting in respect of depreciable road property. The Province of British Columbia strongly advocates the universal adoption of depreciation accounting applicable to all property by means of the straight-line method for reasons which I will put to the Commission.

One further comment on the problem of uniform accounting will, I believe, be in order. From past experience it would appear that this is a subject upon which the railways cannot agree between themselves. Accordingly, it is important that the power and responsibility for its establishment should be placed squarely upon the shoulders of the Board. They must not be placed in the position of referee but must be made the arbiter of the matter.

It is for this reason that I support in part Mr. Shepard's proposed amendment to The Railway Act as follows:

"438A(1) The Board shall, as soon as is practicable after the coming into force of this section, prescribe:

- (a) A uniform system of accounts applicable to all railway companies or such railways as it deems proper, and the manner in which such accounts shall be kept, and shall fix a period of time within which the companies shall put into effect such uniform system of accounts;
 - (b) For all railway companies the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property.
- (2) Nothing in this section shall require any railway company for corporate purposes to keep its accounts on the prescribed uniform system or charge prescribed depreciation rates.
- (3) The Board or any duly authorized officer or agent shall at all times have authority to inspect and take copies of all accounts, books, records, memoranda or other documents of any railway company.

In my opinion subsection (2) as above is not advisable or necessary since I do not think it is feasible for a railway company to keep two sets of accounts - one for rate making purposes and another for its own fiscal purposes. Further, I am of the opinion that the general public should be informed of the financial position of the companies on the basis established by the Board.

Depreciation.

In their submissions before this Commission the Canadian Pacific Railway have continued to urge their contention that the user method for the provision of depreciation is most suitable for adoption by the railways of Canada.

Since Mr. Kent's evidence on the subject of depreciation was referred to on several occasions by the Canadian Pacific Railway in their brief in evidence before this Commission, I would like to refer the Commission to the whole of that evidence which may be found on p. 3219 extending to p. 3240 of the 20% Case. The whole tenure of Mr. Kent's evidence was to the effect that the straight-line method was very much more suitable than the user method for the purpose of determining the correct level of expenses upon which to determine financial necessity, and his opinion was crystallized in the following extract on p. 3236:

"In my opinion the straight-line method is very much more practicable than the user method in the case of a regulated public user utility."

The contention of the provinces in the 20% Case was adopted by the Majority Judgment of the Board of Transport Commissioners, dated September 20th, 1949, where on p. 6 the subject is disposed of in the following language:

"In a period of intensive use the charge to depreciation by the user method is increased over what it would be, given the same rate applied to an equal service value if the intensity of use were less; the practical result being that depreciation expense tends to rise and fall in accordance with the intensity of use and is reflected by a rise and fall in total operating expenses. Today, total operating expenses are

at a high level and one of the items accounting in part for this level is the depreciation charge. That the railway is under a high degree of use today is evident from data placed before the Board by the railway itself. If the Board accepts the railway's contention respecting depreciation it is in fact projecting into the future a fixed expense, which, in respect, to the intensity of use of the equipment and property in the future, may well be inflated, and thereby setting a general level of freight rates, applicable to the future, which may be higher than warranted."

The Canadian Pacific Railway Company again advanced before your Commission in their submission and through their witnesses, Mr. Liddy and Mr. Thompson, the desirability of the adoption of the user method of providing for depreciation. In general, the same reasons that were advanced before the Board of Transport Commissioners and rejected by that body were placed before your Commission with the added suggestion conveyed by Mr. Liddy (pp.16,718 and 16,721) that the provision of depreciation by means of the user method carried an advantage to the user of the railway, to wit: the freight shipper. In that connection, it is my submission that the suggested advantages to the users of the railway are wholly illusory, and as a matter of fact can operate only to his detriment. Even conceding that the rate under the user method has been correctly struck, the freight shipper is primarily concerned with the amount of the charge for depreciation in the event of a case to determine the level of freight rates. Now it has been the history of all freight rate increase cases that they have occurred in periods of expansion, high traffic volume and greater or lesser inflationary pressures. In fact

it has been these very elements which gave rise to the need for increased rates. In consequence, therefore, it is my submission that as the user method will invariably produce a higher charge in periods of high traffic it will result in the establishment of freight rates at a higher level than would otherwise be necessary in any recurring freight rate increase cases.

In addition to the views of the experts quoted and who appeared before the Board of Transport Commissioners, this Commission has had the benefit of the views of Mr. Cooper, a practical railroad accountant who (pp. 19,087) gave it as his opinion that the user method was neither a systematic nor a rational method of providing for this expense, nor was this method of providing for depreciation particularly suitable to railroad accounting. Mr. Cooper further gave it as his opinion on p. 18,730 (reiterated on p. 19,092) that use was not the factor of paramount importance in bringing about depreciation but rather the effluence of time or obsolescence was a factor of even greater importance.

In the light of all the evidence brought before this Commission on the subject, I submit that in pursuance of the Order in Council directing that your Commission study this subject that your recommendations be that all railways under the jurisdiction of the Board of Transport Commissioners for Canada compute charges for depreciation on the same categories of assets by means of an annual charge for depreciation computed upon the straight-line method.

RATE BASE AND RATE OF RETURN.

While Counsel has dealt with this subject rather fully I do wish to make certain comments on it.

The Canadian Pacific Railway Company has not asked this Commission to establish a rate base and rate of return

upon which the Board of Transport Commissioners for Canada should be directed to find the permissible earning level of the Canadian Pacific Railway Company in subsequent rate cases, but it has indicated in its submission on pp. 64-69 of Part 1 and through evidence tended by Mr. Liddy and Mr. Thompson that, in their view, this method of establishing rates carries their support.

It is the submission of the Province of British Columbia on this subject that no recommendation should be handed down by your Commission as to the desirability or otherwise of adopting a rate of return without a detailed examination of this most complex subject. The view of the Canadian Pacific Railway Company is well reflected on this subject which occurs on p.16756 of the transcript when Mr. Evans replying to a suggestion of Commissioner Innis that an omniscient Board would be required to administer such rate regulations, replied as follows:

"I wonder if you do, sir? You take a given situation, Let us suppose that this Board judgment handed down today has suggested that you might increase rates x% and that when rates were increased that they would provide a return of y% on the investment, and that they deemed that fair and reasonable. Now it would not follow at all that they would have to be omniscient because if the return went up, we will say in 1950, suppose they allow 6% and the return went up to 7.1/2% or 8%, they would just step in with an order to reduce rates."

(- and I suppose the converse would hold true that if the return went down rates would be increased).

The foregoing to my mind represents one of the principal dangers contained in the adoption of the principle of setting freight rates almost automatically on the basis of providing

a return on the total monies invested. Freight rates are very different from the rates of other utilities such as telephone companies, gas and electric light companies, in that their effect is felt far and wide upon whole industries and areas. It is my opinion that it would be extremely dangerous to have freight rates established on any such automatic principle so that if the return went down rates went up without a full examination of the effect of any such increase.

That this is the view of the Company officials was confirmed by Mr. Liddy, at p. 17312 in answer to a question put by Mr. Covert as to the desirability of the adoption of rate base and rate of return method, who replied as follows:

"A. That seems to be our only solution in Canada for expediting hearings and a workable formula."

This subject is further complicated by the place of the Canadian National Railways in the rate structure of Canada. It was suggested by Mr. Liddy at p. 17329 that both the Canadian Pacific Railway Company and the Canadian National Railways should be on a rate basis. Now, the whole theory underlying this method of finding the permitted earning level of utility is that all the investment therein is made for the purpose of earning a reasonable yield. We are all well aware that there are many sections of the Canadian National Railway Lines that are not commercial, but are maintained for reasons of national policy - either for development or defence or like reasons. It would therefore follow that before any rate base could be arrived at in respect of the Canadian National Railway properties, a detailed analysis of the investment would have to be conducted and the entire system classified into those properties which were commercial and those properties which were constructed and maintained for reasons of national policy.

In conclusion on this subject I would urge this Commission that inasmuch as the rate base of the Canadian Pacific Railway Company is completely unproven and that it would take separate hearings or a specific examination of the Company's accounts and properties in order to prove the rate base, that no finding thereon either in principle or in detail should be made at this time.

ARGUMENT SUBMITTED ON BEHALF OF THE
PROVINCE OF NOVA SCOTIA

BY MR. F. D. SMITH

THE CHAIRMAN: We are now dealing the Nova Scotia?

MR. SMITH: Yes, my lord. My lord, I do not propose to deal with perhaps as many topics as some of my friends that have preceded me, but I have something to say on some of the topics which have been discussed during the course of this long hearing.

ECONOMIC, GEOGRAPHIC AND OTHER DISADVANTAGES

In Paragraph 2 (a) of Order-in-Council P.C. 6033, your Commissioners are specifically authorized to --

"(a) Review and report upon the effect, in any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada."

In the Submission of the Government of the Province of Nova Scotia, we referred to the transportation problem relating to Nova Scotia, having regard to the handicaps imposed upon her economic life, by geography and by transportation and other policies in Canada.

The Province adopted and relied upon the findings of the Duncan Report relating to transportation and freight rates, history of Intercolonial Railway, rate structure of Intercolonial Railway and effect of changes in rate structures on the Maritime, and the recommendations on freight rates and as to the scope of the Railway Commission's functions, incidence of horizontal "war" increases, and The Maritime Freight Rates Act.

It was mentioned that the Duncan Report was, in respect of such recommendations, implemented by the passage of the Maritime Freight Rates Act. The provisions of that Act were discussed and some of the decisions on it were referred to. I intend to discuss further on in my argument the position of the Province with respect to The Maritime Freight Rates Act.

The next three or four pages of this Submission are really a synopsis of the statements made as to the position of the Maritimes in my original memorandum. Perhaps I could run over them very quickly, but as I do not intend to base my argument greatly on these matters, I intend to deal with matters of more general effect. I do specifically relate my argument as to the handicaps to about three or four specific matters. Perhaps it would save time if I read it, my lord, and I propose to do so.

As pointed out in the Submission of the Province, the Act reduced the cost of sending goods from Nova Scotia outwards but did not reduce the cost of conveying goods into Nova Scotia from places outside the select territory. The Act did nothing to reduce the cost of living in Nova Scotia in so far as it was influenced by the cost of commodities obtained from

Central Canada and that this applied both to consumers' and capital goods.

It was also suggested in the submission that the weak position of basic producers in Nova Scotia had been accentuated by the international, financial, trade and exchange restrictions and problems which have been the aftermath of the Second Great War.

Reference was also made to the findings of Commissions appointed both by the Federal and Provincial Governments with respect to the relative and in some cases absolute decline in the Maritime economy which has continued for many years.

General reference was made to the economic forces which have influenced industrial development in Canada, particularly to the centralizing influence which is found in the improvement of transportation by the construction of the railway and canal systems.

It was pointed out in the Submission that it is undoubted that the tariff system which was aimed at creating in Canada a group of industries, producing commodities which had previously been imported, was the cause of the concentration of the industrial expansion in Ontario and Quebec.

THE CHAIRMAN: Are you arguing that later on?

MR. SMITH: No, I am not arguing. That is a statement really of a basic condition, but I am not asking for any special recommendations from the Commission in that regard.

THE CHAIRMAN: What I mean is this, that it is just running through my mind that of course you mean Customs tariffs?

MR. SMITH: Yes, I am not going to discuss the

matter of Customs tariffs.

THE CHAIRMAN: I see, because you say:

"....was aimed at creating in Canada a group of industries.."

MR. SMITH: Yes.

THE CHAIRMAN: That is a fact of course, It was aimed at creating industries in Canada?

MR. SMITH: Yes, it was aimed at creating industries in Canada.

THE CHAIRMAN: Does that necessarily mean that their concentration - -

MR. SMITH: That was the object of having the tariff committee, but by the force of circumstances and events, what did happen was that the great industrial expansion was in Ontario and Quebec rather than in the Maritime Provinces.

THE CHAIRMAN: What I mean is, if there was not a protective tariff there would still be industries in Canada.

MR. SMITH: There would still be industries.

THE CHAIRMAN: Would they be concentrated in the same way, in the same regions for the same reasons?

MR. SMITH: I don't think possibly they would, because there was a great encouragement of industry in Canada which would not have come to Canada but by reason of the tariff system.

THE CHAIRMAN: I know that.

MR. SMITH: We would be importing goods rather than manufacturing them.

There therefore is in Central Canada the accumulated effect of natural advantages, together with the existence of a large and natural market for its expanding industries. The manufacturing industries of

the Maritimes on the other hand, unlike those of Central Canada, failed, with the exception of iron and steel, to derive substantial benefit from the development of Western Canada and from the great expenditures made in the construction of the great transcontinental railway and canal systems.

The coming of the railways did not, as hoped, bring new opportunities for the Maritime Provinces of compensating for the blow to their commerce by linking a large hinterland to their ports. Traffic was driven instead, to the inland St. Lawrence ports and to the great American ports to the South.

With the highly specialized export production in Western Canada, that is, based on a grain and wheat economy, and the decline in the competitive position of the small Maritime manufacturers, Ontario and Quebec became the manufacturing centre of the country. The great volume of traffic from the Prairie region moved over the railways and waterways and out through the ports of the Central Provinces.

The disadvantages of the Maritime Provinces arising out of their isolation from the large markets of Central Canada and the West, their distance from the industrial centre of gravity of the continent situated in Midwestern United States and the unfavourable circumstances affecting the local exporting industries prevented them from sharing in the expansion of manufacturing which took place in Ontario and Quebec.

The difficulties of the widespread economic readjustment which the Maritime region had to undergo were enhanced by the effects of the national policies.

The policy of protective tariffs bore with

The first thing I noticed when I stepped out of the car was the cold, crisp air. It was a relief after the warm, stuffy interior. I looked up at the sky, which was a pale, hazy blue. The sun was just beginning to rise, casting a soft, golden glow over the landscape. The ground was covered in a layer of frost, and the trees were bare, their branches reaching out like skeletal fingers. I took a deep breath, feeling the cold air fill my lungs. It was a strange feeling, at once refreshing and unsettling. I walked a few steps, my boots crunching on the frost. In the distance, I could see the silhouettes of mountains, their peaks shrouded in mist. The overall atmosphere was one of quiet solitude and mystery. I felt like I had entered a new world, one that was both beautiful and terrifying. I continued to walk, my heart pounding in my chest. The silence was broken by the occasional rustle of leaves or the distant call of a bird. I felt a sense of anticipation, as if something was about to happen. The light grew brighter as the sun rose higher in the sky. The frost on the ground began to melt, and the air grew warmer. I felt a sense of relief, as if I had been waiting for this moment. I looked back over my shoulder, seeing the car where I had left it. It felt like a long time ago. I turned and continued to walk, my path leading me deeper into the unknown. The world around me was changing, and I knew that I was a part of it. I felt a sense of purpose, as if I had been chosen for a special mission. The journey was just beginning, and I was ready for whatever came next.

increasing weight upon its depressed and marginal exporting industries.

In Part I, page 187 of the Sirois Report, it is said that the Maritimes form the most mature and the most chronically depressed regional economy in Canada, and at page 188, it is pointed out, with certain exceptions:

" . . . the Maritime economy in general labours under disabilities and they are reflected in a very low surplus income. . . . National tariff policies have probably operated unfavourably in general, since Maritime manufacturing industries producing for home consumption have been exposed to the competition of the more advantageously located manufacturing industries of Central Canada; Maritime primary industries have been burdened with increased costs; and the great shipping, commercial, and financial service industries, which bulked so large at the time of Confederation, have either found it impossible to adapt themselves to changed techniques and the framework of national policies and survive, or have migrated to Central Canada."

In the argument which I propose to make on behalf of the Transportation Commission of the Maritime Board of Trade, I intend to deal at some length with the present economic position of the Maritime Provinces.

I realize that I should not only point out handicaps but also suggest the measures which, in my submission, should be initiated in order that the national transportation policy may best serve the economic well-being of all Canada.

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1906. 11. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844.

Legation to Stockholm and the Corporation

1. The first part of the paper is devoted to a review of the literature on the topic.

The Submission of the Province specifically referred to three subjects which are of special importance to its economy, namely:

(a) the prejudicial effect of competitive rates effected in Central Canada:

(Submission of Nova Scotia, pp. 24-29;
Vol. 71, pp. 14585-14590)

(b) the maintenance of arbitraries over Montreal;

(Submission of Nova Scotia, pp. 31-32;
Vol. 71, pp. 14590-14592)

(c) the incidence of horizontal increases;

(Submission of Nova Scotia, pp. 32-40;
Vol. 71, pp. 14592-14602)

The disadvantages of the Province in respect of transportation must be considered in any discussion of these questions.

Owing to the weak industrial and agricultural position of the Province any increase in freight rates bears most heavily upon its economy.

The economy of Nova Scotia before April 8, 1948, when the first increase of 21% came into effect, was on a low level in comparison with that of the wealthier Provinces and of necessity the effect of the two increases has been, therefore, much more severe in the Province of Nova Scotia.

I do not now propose to deal with these three matters, but I ask that when I come to discuss them, you will have in mind the background of the economic position of the Province.

And so the next topic I intend to deal with, my lord and gentlemen, is the question of horizontal increases.

HORIZONTAL INCREASES

The Board, in its judgment in the 21% Case, authorized a horizontal increase of 21% on the rates involved in the application, with the exception that the increase on coal and coke authorized was 25¢ per ton.

In the Judgment of the Chief Commissioner, concurred in by the other members of the Board, it was said:

"Strong exception was taken by the respondents to the granting of a straight percentage increase in freight rates. But, as I view the matter, this is the only workable and practical method of dealing with the question in order to provide the additional revenue required by the railways.

"There were submissions that if increased rates were authorized there should be varying percentages of increase, the lowest percentage of increase being made on long hauls and the highest percentage of increase on short hauls; it was also suggested that maximum increases should be provided in order to avoid a very large increase upon relatively high rates from distant points of production to important markets. One difficulty with respect to the adoption of a varying or maximum increase is apparent, namely, the lack of reliable traffic statistics from which to determine the additional revenue which would accrue from flat or maximum increases on particular commodities. Further there is not on the record anything to enable any determination concerning the commodities and sections of the

country and even the individual rates which could best bear the burden of an increase."

THE CHAIRMAN: Pardon me, Mr. Smith, does that and the whole of their judgment imply that the respondents -- in that case the Provinces -- should have furnished this information?

MR. SMITH: I suppose that does imply that if the respondents raised the question of horizontal increases, there was some onus upon them. Now, whether or not that view is correct it differs apparently from the view expressed by the Interstate Commerce Commission in cases to which I intend to refer.

THE CHAIRMAN: Is that not the objection made the other day, that the Board has considered itself just to take the evidenced furnished on the one hand by the Railways and on the other hand by the opponents of the Railways?

MR. SMITH: Yes, and that they have --

THE CHAIRMAN: And say that because neither of you have given the information, we will get it for ourselves?

MR. SMITH: There were submissions --

THE CHAIRMAN: Is this an instance of that, is this part of that Judgment an instance of that?

MR. SMITH: I think it indicates the point of view of the Board.

THE CHAIRMAN: Yes, I see.

MR. SMITH: They did not perhaps have in mind the fact that they were an administrative board; they really adopted the position perhaps of a court rather than a court plus an administrative body.

"While there are a number of individual cases where discrimination in rates is alleged to exist"--

THE CHAIRMAN: Pardon me a moment there, too. Would it be this, that these very things are the things which the government considered that the Commission should inquire into?

MR. SMITH: Yes, my lord, that is why we are raising the question now.

THE CHAIRMAN: That the Board did not have facilities for inquiring into them.

MR. SMITH: The Board said they did not have the statistics. As to whether they had the facilities to obtain the statistics, at least the Provinces contended that there was an onus upon the --

THE CHAIRMAN: You see it says: "Further there is not anything on the record to enable any determination concerning the commodities and sections of the country and even the individual rates which could best bear the burden of an increase."

MR. SMITH: Yes, that is right.

THE CHAIRMAN: And they left it at that.

MR. SMITH: I think in the later judgment to which I shall refer, there is a reference to this matter. This is the judgment of course in the 21% case. In the later judgment --

THE CHAIRMAN: But are you submitting that in future cases they should not have this --

MR. SMITH: I do not think they should adopt that attitude, but what I will contend is that there should be a continual study of the question. I realize, my lord, that it is difficult, I must be frank, to deal with an application for exceptions to horizontal increase if the Board is of the opinion that there should be an increase, and the question then as to the distribution of an increase is a matter which must be considered.

It is difficult for the Board, if they have those statistics, and they have not made a study and if they do not intend to make a study, for it to deal with the points which are mentioned in this judgment.

THE CHAIRMAN: After all, the Board is not called upon that often to grant general freight increases or decreases.

MR. SMITH: Well, there was a long period between 1922 and ---

THE CHAIRMAN: Might not that make it all the easier for them to keep themselves informed?

MR. SMITH: My submission will be that they should adopt the practice which I suggest is the practice of the United States, of making continual studies.

THE CHAIRMAN: All right.

MR. SMITH:

"While there are a number of individual cases where discrimination in rates is alleged to exist and it may be that some of these require special and separate consideration, on another occasion. But they do not seem to be so outstanding as to require separate treatment in a case of this nature. The Province of British Columbia proposes to make a substantive application to the Board for the removal of the 'Mountain Differential' and the Province of Alberta has under consideration a similar application for like purpose, and to have removed discrimination which is alleged to result from trans-continental rates."

* * *

I think we have heard something about these matters since.

MR. CHAIRMAN: Is that right, that the Province of British Columbia proposes to make a substantive appli-

cation to the Board for the removal of the "Mountain Differential", and that the Province of Alberta has under consideration a similar application for a like purpose? What is that?

MR. SMITH: That is transcontinental rates.

THE CHAIRMAN: No, no.

MR. SMITH: They supported the application, Alberta supported the application, as I understand it, of British Columbia, didn't they, Mr. Evans?

MR. EVANS: I think so.

MR. SMITH: Mr. Frawley is here, perhaps he could speak better of it.

"Upon consideration of the whole situation, I think that, in this case, the general increase in freight rates should apply equally throughout the country."

-- Pamphlet copy of 21% Judgment, p. 65.

Transcript, Vol. 71, p. 14593.

In the review of the 21% judgment pursuant to Order-in-Council P.C. 4678, the Board decided that no evidence was furnished to it or no matters drawn to its attention which would justify disturbing the findings of the Board in the 21% case with respect to horizontal percentage increases. (Pamphlet copy of 20% Judgment of September 20, 1949, p.4.)

The application of July 27, 1948, was for authority to make a general advance of 20% in freight rates with the same exceptions as were made in the 21% Case. An increase of 25¢ per ton in the freight rates on coal and coke was requested.

In the majority Judgment, that is, of September 20, 1949, it is said as follows -- that, your lordships will remember, was both a review of the 21% Judgment pursuant to the Order-in-Council, and also it included the

disposition of the application for the 20% Case on an interim basis.

"As in the hearings prior to the decision in the 21 per cent case so in the hearing of this application, the respondents have vigorously contended against the principle of horizontal increases. At this time the Board is not in a position to give a final determination in respect of this contention because this matter is already the subject of a direction to this Board set out in Order in Council P.C. 1487 of April 7, 1948, in which Order in Council the Board was directed to make a thorough investigation of the rates structure of railways and railway companies which are under the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rates structure which will under substantially similar circumstances and conditions be equal in its application to all persons and localities subject to such special statutory provisions as affect freight rates."

-- Pamphlet copy of Judgment in the 20% Case of September 20, 1949, p. 11.

THE CHAIRMAN: Does that order make any specific mention of horizontal increase?

MR. SMITH: No, my lord. Then I refer to the judgment of Mr. Commissioner MacPherson in the judgment which was dated February 28, 1950, in which he said:

" I concur in the Judgment of the Assistant Chief Commissioner although I would prefer to see some relief given by way of maximum increases on basic materials where the markets are long distances from the source of supply. I realize, however, that the Board cannot deal with the overall revenue requirements and limit the increase in certain cases."

To do so would entail a much more complete study of individual types of traffic than the Board is able to do at the present time.

THE CHAIRMAN: What does he mean by that, do you know?

MR. SMITH: He means, I suppose, that he has to deal with this matter, the matter before the 20% application, and he would delay the disposition of that application unduly, particularly in view of the judgment of the Supreme Court of Canada.

THE CHAIRMAN: Just a matter of time, the proper time?

MR. SMITH: Time, yes, my lord.

"I also realize that the same revenue requirements would necessitate placing a higher burden on other traffic if maximums were to be prescribed.

"There is, however, an opportunity to consider this feature in the General Freight Rate Investigation. Furthermore, it is the privilege of anyone at any time to lodge a complaint with the Board as to any specific rate considered to be unreasonable or unjustly discriminatory. I would also think that the railways will, in their own interests, give careful consideration to any pleas for relief if such are made."

--Pamphlet copy of Judgment, p. 17.

COMMISSIONER INNIS: Why does he say it is the privilege?

THE CHAIRMAN: Is the right, he means?

MR. SMITH: I don't think it is quite exact

phraseology, my lord.

I refer to the Submission of the Government of the Province of Nova Scotia at pages 16, 17 and 18 (Transcript, Vol. 71, pp. 14573-14577) where Paragraph 13 of the Duncan Report with respect to the incidence of horizontal war increases is quoted.

I also refer to the passages in the Submission of Nova Scotia at pages 32-40. (Transcript, Vol. 71, pp. 14592-14602 and the discussion before this Commission on February 8th and 9th, 1950, at Vol. 71, pp. 14645-14670 and Vol. 72, pp. 14671-14685 and 14707-14712.)

The evidence of the following witnesses particularly proves, in my submission, the prejudicial effect of horizontal increases:

L. A. Forsyth, K.C.....Vol. 29, pp. 5501-5567
and pp. 5600-5671

C.M.P. Fisher (Of Sackville,
New Brunswick) Vol. 37 pp. 7127-7173

A.R. French (Also of Sackville,
New Brunswick) Vol. 38 pp. 7174-7206

I cannot do better than quote Paragraph 13 of the Duncan Report, to which I have already referred. It, omitting the Statement, reads as follows:-

"13. Incidence of 'Horizontal' War Increases.

There is one further very important feature of the railway situation, as it affects the Maritimes, which calls for special ~~mention~~. In one sense it is connected with the problems that we have been discussing but its immediate incidence is not so inter-connected with the general problem as to make it impossible to deal with it separately. Indeed the reaction

of the burden which it imposes is so great that, in our view, it should be dealt with as a special problem. We refer to the system under which, during the late war, flat percentage increases (known as 'horizontal increases'), were added to railway rates. We quote, merely as an example, figures submitted to us by the British Empire Steel Corporation in respect of iron and steel articles which show, as briefly as it can be shown, exactly how this system of flat percentage advances has operated:-

STATEMENT of rates on iron and steel articles from Trenton, N.S., and Hamilton, Ont., showing percentage of increase rates in effect 1926 over 1916 -- Rates to the points shown below, and the additional costs per gross ton which the increase represents."

.....

.....

"By the mere operation of railway increases -- and having no relation to any other business considerations -- the burden which a Trenton plant has to meet now as compared with a Hamilton plant is much greater in money than it was formerly.

"The railway administration, in giving evidence before us, agreed that long-distance traffic, particularly heavy traffic, had been seriously prejudiced by the operation of the horizontal increase. It was, they said, their

opinion that even on the present level of class rates, and considering expenses, the higher class goods are not carrying their full share of the expense of operations. They had made the suggestion to the Board of Railway Commissioners some two years ago -- at a time when a reduction in class rates was being considered -- that instead of reducing the class rates they should select what was considered basic commodities, such as grain, forest products, coal, iron and steel. The Railway Board, we were informed by the railway administration, felt themselves prevented from working out the proposition in that way, since when the advances were made they were made horizontally, and some declaration had been made at the time that when reductions came they also would be made horizontally.

"In view of the importance of railway rates to long-distance and heavy traffic, we have no hesitation in recommending that the matter should be taken into fresh consideration by the Railway Commission, that they should be relieved from the necessity of regarding themselves as bound by any such declaration as is referred to, but should be free to consider the whole question on its merits."

-- pp. 26-27.

The reference to the attitude of the Board in the above passage is confirmed by the following statement in the Judgment in the so-called 1922 Reduction Case 11 J. O. R. & R. 61 at page 67.

"It is arguable that in revising rates, the logical method to pursue is to redress antecedent necessary percentage increases by subsequent percentage decreases; thus minimizing the inequalities which the percentage increases had accentuated. As a matter of emergency action, however, revisions may be made on basic commodities in so far as is possible, consistently with other conditions now existing."

In the submission of the Dominion Steel and Coal Corporation Limited at Vol. 29, pp. 5510-5511, in order to bring the comparative statistical position, as shown in the Statement, up to date the "List of Commodities on which Rates Apply" was adjusted so as to show the relative position of Trenton and Hamilton as between 1926 and 1949. It was therein contended that the resultant figures emphasized the point of the conclusion of the Duncan Commission Report, with which the administration of the railway was then in complete accord, i.e. that traffic in iron and steel products from the Maritimes had been seriously prejudiced by the operation of the horizontal increase.

It is submitted, as contended in the Submission of the Dominion Steel and Coal Corporation at Vol. 29, p. 5513, that prejudice to the traffic of the plants of the Corporation which the Duncan Commission and the railway administration agreed had, in 1926, been created by horizontal increases, has been perpetuated and aggravated by the horizontal increases recently ordered.

I should like to emphasize the point made in Paragraph 13 of the Duncan Report, to which I refer, that by the mere operation of the railway increases and having no relation to any other business consideration, the burden which the Nova Scotia plant has to meet now, as compared

with the Ontario plant is much greater in money than it was formerly.

Mr. French of Sackville, New Brunswick, at Vol. 38, p. 7186 put the case for exceptions to horizontal increases in a very practical way when, in response to a question from my friend, Mr. Evans, as to whether he felt that his Company should be kept at all times on the same basis dollar-wise in increased freight rates as his Central Canadian competitors, he said:-

"A. No, we do not feel that. That would be unfair, but if the freight rate increase to the Ontario manufacturer bringing his pig iron from Hamilton to Sault Ste. Marie and to Carleton Place is 40 cents we do not expect you to bring that a thousand miles more for 40 cents, but where they pay 40 cents we pay say \$2.40. We do not expect you to carry it for 40 cents, but we think you should give us consideration and cushion the increase to the Maritime industries so that we have a chance to survive."

In Professor Locklin's "Economics of Transportation", 3rd ed., p. 40, the learned author expresses the following views with respect to horizontal increases:-

"If the rate increase is a percentage increase, quite different results will ensue. The rate increase will represent a greater aggregate increase to the shippers who formerly paid the highest rates. The rate increase will be small to the shippers who paid the lowest rates before. Prices will undoubtedly

rise, but it is impossible to say by how much. The cost curve is not raised by a definite amount. The cost of putting some portions of the supply on the market is increased more than that of other portions. After an increase of this sort, the relative position of different producers is altered. The long-distance shipper is most adversely affected. The shipper who is close to the market is least affected. In fact, the near producer may benefit from the increase because his distant competitors may be excluded from the market. There is plenty of evidence that the freight rate increases of 1918 and 1920, which were percentage increases, had this effect, and worked great hardships on manufacturers, dealers, and farmers, who had long hauls. In the Fifteen Per Cent Case of 1931, 178 I.C.C. 539, the Commission was besieged with briefs opposing the percentage method of increasing rates, "if increases were to be made."

I also quote as follows from Sherrington, (that is an English work) "Economics of Rail Transport in Great Britain", Vol. II, at p. 121:

"The only advantage of flat percentage increases lies in their comparative simplicity of application, and it will be realized at once that such flat increases create an unevenness of incidence upon different commodities which is highly undesirable."

MR. SMITH: In the presentation of the Sub-mission filed by the Province of Nova Scotia, I referred to recent cases before the Interstate Commerce Commission, in which the question of horizontal increases was discussed, namely:

Ex Parte 123, 226 I.C.C. 41 at p. 76.

Ex Parte 162, 264, I.C.C. 695 at pp. 715-716;
266 I.C.C. 537

Ex Parte 166, 270 I.C.C. 403 at pp. 452-455.

Ex Parte 168, 276, I.C.C. 9 at p. 17.

(Vol. 71, pp. 1465-14670;
Vol. 72, pp. 14671-14683 and
14708)

In my cross-examination of Witness Jefferson, I referred him to the following American cases:

Increased Rates 1920, 58 I.C.C. 220 at p. 245.

Fifteen Percent Case, 1931, Ex Parte 103, 178 I.C.C. 539

Ex Parte 115, 208 I.C.C. 4 at p. 11

Ex Parte 148, 248 I.C.C. 545 at pp. 572-3

Ex Parte 162, 266 I.C.C. 537

Ex Parte 166, 270 I.C.C. 404 at P. 453

Ex Parte 168, 276 I.C.C. 9 at pp. 17 and 48

(Transcript, Vol. 79, pp. 15844-15882)

The extent of the exceptions to horizontal increases which have been adopted in the United States is shown by Exhibit 266.

That, my lord, was the exhibit containing a letter from W. H. S. Stevens, Director of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, to me, dated March 30, 1950, and an estimate which had been prepared for submission to him containing a comparison of the freight revenue from total tons carried by United States Class 1 railroads in 1947, with a conservative estimate of the revenues of the commodities excepted from the general increase in

[The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, but the specific content cannot be discerned.]

Ex Parte 162.

The total freight revenue of U.S. Class I Railroads in 1947 was \$7,409,174,576 and this exhibit conservatively estimates that of this figure \$4,772,197,796 was excluded from the standard percentage increases in Ex Parte 162.

This exhibit shows the various kinds of commodities which were excepted in the various --

THE CHAIRMAN: That is Exhibit 266?

MR. SMITH: Exhibit 266, my lord.

THE CHAIRMAN: Then are you satisfied with the methods pursued by the Interstate Commerce Commission on that occasion?

MR. SMITH: Yes, my lord.

Dr. W. H. S. Stevens, the Director of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, in his letter to me dated March 30, 1950, states that in the judgment of the Bureau, the distributions as well as the total revenues for all the excluded items fall within the area of reasonable estimates.

Dr. Stevens, as I said, in his letter to me states that this distribution of the total revenues for all the excluded items fall within the area of reasonable estimates. He says:

"In accordance with your request, the distribution of the commodities and classes and related revenues in your specified "excepted" groupings have been reviewed. In the judgment of the Bureau, these distributions, as well as the total revenues for all these excepted items, may be said to fall within the area of reasonable estimates. You will understand, of course,

that this is not an official figure inasmuch as the Commission has made no estimates such as those included in your tabulation."

It will be observed upon reference to this Exhibit that there were five classes of exceptions from the standard increases:

1. In the case of certain commodities, there was a percentage increase less than the standard increase with no maxima.

2. In the case of other commodities, there was a percentage increase less than the standard percentage increase with a maximum.

3. In the case of other commodities, there was a standard percentage increase with maxima.

4. In the fourth case, there was a flat increase in cents per hundred pounds or tons, net or gross, as rated.

5. In the fifth case, which comprised iron ore to Upper Lake ports, and anthracite coal to breakers and washers, there was no increase.

Now, it might be of interest to your Commission if I just glanced at the type of commodities which were covered by those particular exceptions.

The first class is a lesser percentage increase with no maxima, and included in that category are such commodities as wheat and corn, other agricultural products, and livestock. That category comprised about \$749 million in revenue.

The next category was where there was a lesser percentage increase with a maxima. There was a smaller amount represented in that category; it amounted in all to \$222 million, and it included such items as cotton in bales, potatoes other than sweet, and other vegetables.

For instance, the total number of potatoes in the category were \$77 million.

The largest category was the standard percentage increase with maxima, which represented a total, as far as we could estimate it, of over \$2,231 million or roughly about 30 per cent of the total revenue. In that category you will find such large items as citrus fruits, other fruits and vegetables. There has been some reference, I think, in the course of these proceedings to this exception and as to the position between the two great producing areas of California and Florida. These citrus fruits, other fruits and vegetables amounted to over ^{\$200} million. Then another large class of goods were logs and wood and lumber generally, which amounted to nearly \$500 million. A further large item was that of petroleum and petroleum products, of \$225 million. Then another very large item was iron and steel, rated fifth and sixth class, not otherwise specified, \$315 million.

The fourth category was where there was a flat increase in cents per hundred pounds or tons net or gross, and that represented over \$1,500 million. Included in that category were such things as anthracite and bituminous coal, lignite and coke, which amounted to over \$1,200 million. I just pause to point out that of course in the present rate cases and in the 21% case there was a similar maxima fixed on coal and coke. Another large item in this category was iron ore, about \$135 million.

Then the fifth category was the case where there was no increase at all, and that included a small item for anthracite coal to breakers and washers, and a substantial portion of the revenue on iron ore which was subject to no increase.

THE CHAIRMAN: Now, you are in favour of this American way of handling it?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Are you giving us any amendment to be introduced?

MR. SMITH: Yes, I intend to, and I have to apologize perhaps, because on looking over the amendment that was put in I found it was not very satisfactory, and I have a new amendment which perhaps the Commission may object to at this time, but I think it carries out the object. I am not very proud of my workmanship, but perhaps if I may be permitted I will deal with that in a moment. There are copies attached, my lord, to your submission further on.

THE CHAIRMAN: Well, you are not satisfied to leave things with the Board as they are?

MR. SMITH: No, my lord. I am making a suggestion on this as an amendment.

In Ex Parte 162 the standard increases in the various territories varied from 20% to 25%.

The next increases were those authorized by Ex Parte 166, varying from $22\frac{1}{2}\%$ to 30% in the different territories.

The exceptions from the standard increases in 166 were essentially the same as in 162. Some commodities which were included in 162 were omitted in 166 and there were in Ex Parte 166 commodities excepted which were not excepted in the earlier case.

The increases in freight rates in the United States over the freight rates which were in effect before the war were in large measure effected by the decisions in Ex Parte 162 and 166, as they are the largest increases which were made.

The only other general increases, namely those made in Ex Parte 148 effective in 1946 and Ex Parte 163 effective in 1949, were much smaller in amount. All those increases were cumulative and therefore the situation in the United States is that a very substantial part of the freight revenue is represented by exceptions to standard percentage increases.

THE CHAIRMAN: Do commissions in the United States lend themselves more easily to this sort of thing?

MR. SMITH: I intend to deal a little further on with the argument of the Canadian Pacific Railway Company in that regard. The point is made, and I quote from their argument, and I attempt to deal with it.

COMMISSIONER ANGUS: Can you tell us in a general way, Mr. Smith, if these exceptions were made by the I.C.C. as a result of its own study or as a result of argument before it?

MR. SMITH: My submission will be, my lord -- and I think I referred to this matter in my cross-examination of Mr. Jefferson --^{there} was a difference of opinion, as you may recall, between us. My submission was, the result of my reading was that the initiative was in the I.C.C. and that later on the railways adopted this system, and I deal with that point later, if I may be permitted to deal with it a little further on in my argument, Dr. Angus. The Canadian Pacific Railway Company say that the situation is different in the United States by reason of the fact that there are a number of small railways; of course, there are both small and large railways in the United States, and it is not analogous to the position where we have two great railway systems in Canada.

COMMISSIONER ANGUS: I am afraid that was not

my question, Mr. Smith. What I meant was this: for instance, one of the exceptions deals with cotton in bales; does that mean that people interested in cotton in bales came and made an argument before the I.C.C.?

MR. SMITH: Yes, sir. You will find nearly every commodity is discussed in those judgments, and the views of the shippers. Apparently in the United States, in somewhat the same way as the Board travelled over different parts of Canada, that Board also was ambulatory, and they heard representations made from the different localities. But in addition to that there seems to have been a very large representation of all persons interested in the production of various commodities, and if the Commission will look at these judgments you will see there is a very lengthy discussion of the individual items. Particularly you will find that in the last case, Ex Parte 168.

COMMISSIONER INNIS: There are general principles laid down, are there?

MR. SMITH: I think there are, my lord. I intend to deal with that. It is a question of interpretation, perhaps, of the judgments.

Notwithstanding this, I say -- notwithstanding the fact that they have made all these exceptions -- it is evident from the attitude of the shippers and public bodies appearing as protestants to the increases that there is a strong feeling in the United States that further exceptions from percentage increases are necessary. This appears from the Judgment in Ex Parte 168, 276 I.C.C. 11 (the judgment was delivered in August, 1949, last year):

"With very few exceptions the attitude of the shippers and public bodies appearing as protestants is one of forceful opposition to any further increase in freight rates and charges,

and many ask for the withdrawal and cancellation of the interim increases authorized in this proceeding. In general, their positions show the diversity of interests, born out of competitive relations between localities and also as between commodities, that have characterized every general rate increase case -- magnified in intensity here as the cumulative effects of previous increases and the present proposals are felt more sharply. We need not detail these conflicting contentions, as their pattern is familiar, Increased Rates, 1920, 58 I.C.C. 220, 243-4, Increased Freight Rates, 1947, 270 I.C.C. 403, 452-3."

---p. 17

and

"We are mindful of the showing made by protestants as to various rate adjustments, as adverted to in this report, and it is to be understood that our conclusion and the findings which follow will be without prejudice to subsequent examination of the reasonableness and lawfulness of any particular rate or rate structure increased as herein authorized. Further, with respect to this phase of the proceedings, what we said in Increased Freight Rates, 1947, 270 I.C.C. 403, 454-5 is particularly apposite here.

"There are many commercial relations which the adjustments already allowed by us or proposed by the carriers would necessarily disturb temporarily, but which would be capable of correction within a reasonable

time. There are also other situations where the allowance of any increases of substantial size must disturb pre-existing relations beyond the possibility of remedial correction so as to maintain the former competitive status. We have the assurance of the petitioners of their intention to proceed by voluntary discussion and co-operation with the shippers and representatives of markets, to devise and endeavour to put into effect such measures as will restore former competitive relations as completely as possible. We expect full and prompt compliance with these representations, in the spirit of the proceeding. Restoration of rate relations should not be made the excuse for further increasing revenues or of bettering the competitive situation of the carriers. As in previous cases of this character, we tender the good offices of our staff in negotiations or advice as to technical features. Further, the remedies provided by the act, in the way of petitions for modification or our findings, complaints seeking reparation, and petitions or complaints for readjustments or for further relief will be available.'

We may add that, as the petitioning carriers have the burden of initiating and maintaining rates that comply with the act, the burden is on them in good faith and with all possible promptness and in a spirit of co-operation to devise and suggest for the consideration of the

shipping public the rates which in their judgment will correct maladjustments.

As previously shown, the cumulative effect of increases in rates already made and those now authorized may tend to diversion or suppression of traffic because exceeding the value of the service. The petitioners have represented that they are aware of this situation, and may be expected to protect their traffic and revenue therefrom by rate revisions necessary for the purpose."

--pp. 111-112.

The following extracts from Increased Freight Rates 1947, Ex Parte 166 at p. 453 are also, I submit, apposite:

"The application of a percentage increase to both long- and short-haul competing shipments results in widening the amount of the difference between the rates, often to such an extent as to exclude the long-haul shipper from the common market or compel him to reduce his prices so that he has no profit."

"In this proceeding it is shown that the petitioners in formulating their proposals decided upon a combination of percentage increases, adjusted to regional needs, with certain maximum limits to preserve traffic and lessen the unfavourable effect upon existing commercial relations, and in some cases stated flat amounts of increases. They undertook, as their judgment indicated, the maintenance of the largest amount of traffic possible for their lines as against competitive interests or the loss of traffic

or substitution of tonnage. The system of making increases devised was generally similar to that employed by us in certain previous general rate proceedings."

The Chairman remarked at Vol. 79, p. 15853, referring to the statement above quoted, that it looked to be a statement founded on experience.

As I will mention later on in my argument, the American railroads have adopted the practice first devised by the Interstate Commerce Commission to provide for a large number of exceptions in their applications for general percentage increases. It is evident from the Judgments in Ex Parte 166 and Ex Parte 168 that they recognize the burden resting upon them to endeavour to alleviate as far as practicable the incidence of horizontal increases by putting into effect measures which will restore relationships and correct maladjustments.

This is most unlike the position which has been taken by the Canadian Railway companies, especially the Canadian Pacific Railway Company, throughout the recent freight rate proceedings and before this Commission. The Submissions of the Canadian Pacific Railway Company with reference to horizontal or flat percentage increases in freight rates are contained in Part II of their Submission, pp. 55-63. It is there suggested that the practice of the Interstate Commerce Commission is not an authority to be applied in Canada because their practice is largely attributable to the fact that in the United States there are a very large number of small railway systems whose interest lies in maintaining industries already located on their lines or in inducing new industries to locate there in preference to the lines of other railways closer to the principal market.

It is admitted at page 57, Part II of the C.P.R. Submission that flat percentage increases applied to rates in circumstances in which a general increase in wholesale prices did not also take place might produce disturbances in relationships but it is there urged that in view of the general increase in such prices, the arguments of the respondents -- I mean by that the provinces -- are, in present circumstances, unsound because they do not take such price increases into account.

The argument advanced by the Canadian Pacific Railway Company is that it is only by percentage increases in freight rates that the competitive relationships between various producers can be maintained.

A practical illustration of the inherent weakness of the suggestion contained in the Submission of the Canadian Pacific Railway is, it is submitted, contained in the following questions and answers, during Mr. Forsyth's examination -- this is a question, I think, directed to him by Dr. Angus:

"Q. I can see your point perfectly, but if your costs have increased by a greater percentage than your competitor's costs, that is to say, if you no longer have this labour advantage, then an increase in freight rates comes as a very severe blow, but if you are considering the structure of trade and the markets and all the rest of it, is not the real factor there the increase in your costs, in your labour costs, and are you not asking the freight rate structure to compensate you for that, as it were?

"A. No, no. You and I are arguing this

thing from two opposite poles. You take the position that because I get into this market at all with the freight rate handicap I have that my other costs must be lower than my competitor's. I say that is an assumption I cannot agree to. I, on the other hand, am trying to present it with a detached point of view, but nevertheless with knowledge of the facts as they exist, and that is why we cannot get together on your proposition. I understand the point now, and I am sorry I was so obtuse before."

--Vol. 29, pp. 5530-5531.

"Q. Is that not really the point in saying that the freight rates if they are to preserve the market structure must not increase?

"A. No, no. I have not suggested that freight rates must not increase.

"Q. Must not increase horizontally?

"A. I say they must not increase horizontally because when I attempt to move a ton of angle bars, bars, bolts or fish plates from Trenton to Brantford, under the increase it costs me \$2.24 a ton more to move it than it did before that increase, but my competitor, who is moving the same commodity from Hamilton, Ontario, only pays 67 cents more. That is a question of dollars and cents, and I say when you are dealing with commodities such as we produce amounts of that substance are too important competitively, and I feel absolutely certain that under normal trading conditions, where supply can meet demand, a horizontal increase has the same prejudicial effect that was recognized by the Duncan Commission, and by the

railway administration twenty-two years ago, and the situation has not changed in that respect. That is my proposition.

"Q. That really separates freight costs from other costs completely?

"A. That is right."

--Vol. 29, p. 5532.

It is perhaps understatement to say that the price level has advanced in the United States as much as in Canada and therefore that the same inflationary influences are present in both countries. Nevertheless, this factor has not been considered in any of the Judgments of the Interstate Commerce Commission to which I have referred. This indicates that the question has been dealt with from a practical point of view and that the Interstate Commerce Commission is convinced that relationships are disturbed and maladjustments result when horizontal increases are made without the required measure of protection.

THE CHAIRMAN: When you speak of the price level there, you mean the price level of what? Of anything, or of just a freight rate?

MR. SMITH: No. If you will remember, there are tables in the Canadian Pacific Railway which show the rise in wholesale prices.

THE CHAIRMAN: Is not this what Mr. Jefferson told us, that the manufacturer farther away should not complain because the article he is putting on the market brings a higher price than it did before?

MR. SMITH: Yes.

THE CHAIRMAN: And that therefore what he loses in one way he gains in the other: is that it?

MR. SMITH: Yes, I think that is the argument for

a horizontal increase, but my submission is, it is the competitive position you must look at, and that, I think, is what is borne out by the Judgments to which I referred. If your competitor is in a better position -- I have read from the Judgment already, that the application of percentage increase to both long and short haul competing shipments, results in widening the amount of difference between the rates, often to such an extent as to exclude the long-haul shipper from the common market or to compel him to reduce prices so that he has no profit. That is the point I am trying to make. In this case Mr. Forsyth's company's costs have increased \$2.24 as against the Stelco's increase to 67 cents. They are both getting the same kind of dollar, it is the same dollar they are getting, and it is my submission that formerly he would have to absorb a difference which is much less than the difference which is created by the horizontal increase.

In my cross-examination of Mr. Jefferson, I endeavoured to prove the fallacy of the proposition stated in his Company's submission and supported by his evidence that the United States railroads themselves were largely responsible for the practice of establishing exceptions to percentage increases because their interest lay in maintaining industries located on their lines or inducing new industries to locate there. I quoted from the decisions of the Interstate Commerce Commission which, in my submission, indicated beyond question that the practice was adopted in the first instance against the objections of the railroads and it was only after the Commission had adopted the practice that the railroads fell in line. I do not propose to repeat my submissions in this regard but merely refer to the relevant discussions in the decisions, namely:

Increased Rates, 1920 58 I.C.C. 220 at p. 245

Ex Parte 103 178 I.C.C. 539 at pp. 555 and 587

Ex Parte 115 208 I.C.C. 4 at p. 11

Ex Parte 166 270 I.C.C. 404 at 453

Ex Parte 168 276 I.C.C. 9 at p. 48

THE CHAIRMAN: How could there have been any contention about it if the railways themselves were in favour of it?

MR. SMITH: I beg your pardon, my lord?

THE CHAIRMAN: How could there have been any contention about it if the railways themselves wanted it done? I do not understand that. It says the railways themselves were largely responsible for the practice of establishing exceptions --

MR. SMITH: I pointed out that even with the applications in which the railroads themselves had asked for exceptions there were still other persons protesting that the exceptions did not go far enough. The point which was made, I think, with Mr. Jefferson was supporting the statement made in the Canadian Pacific Railway brief, that the practice grew up to make these exceptions in the interests of the railways themselves, not in the interests of the shippers, and I am endeavouring to refute that statement.

THE CHAIRMAN: That is, you say that in fact the practice was adopted despite the objections?

MR. SMITH: In the first instance despite the objection; and what I say is that in the thirties -- I do not know the exact date -- apparently the railways were convinced that that was the point of view of the Commission, that there should be exceptions, and they framed their applications accordingly, providing for a number of exceptions in the manner which I have mentioned,

and I say they adopted the practice which had been at first laid down by the Interstate Commerce Commission, and I do contend also that notwithstanding that in those cases they had made these exceptions, there were shippers still contending that they had not gone far enough.

Perhaps I might read the two passages here from the Judgments.

In support of my position, I quote from two of these decisions:

"In the various general proceedings involving horizontal changes in the general rate level in the past two decades the issues have generally revolved around proposals to apply a uniform percentage increase or reduction to all rates. The present proposals depart from the uniform percentage plan."

That was the case where the railways came in asking for an exception from the horizontal increase.

THE CHAIRMAN: That matter, then, is a matter between localities?

MR. SMITH: Yes, my lord, between localities, and also as between commodities.

"For the most part an increase of 10 percent in present rates is proposed, subject to certain maxima and exceptions, and some commodities would be subjected to increases of flat amounts instead of percentages, while others would be exempted from any increases, and in still other instances increases are proposed only for the longer hauls beyond what applicants believe to be the zone of the most acute truck competition."

That is in the case of Ex Parte 115, which was decided, I think, in 1937 or 1938.

THE CHAIRMAN: You have it here, 208 I.C.C. 11.

MR. SMITH: Yes.

THE CHAIRMAN: Ex Parte 115.

MR. SMITH: Ex Parte 115, my lord.

Also at page 453 of Ex Parte 166, which is reported in 270 I.C.C., it is said:

"The system of making increases devised was generally similar to that employed by us in certain previous general rate proceedings."

Now, it is my submission, as well as other passages, clearly demonstrate that the practice of making exceptions from the general percentage increases was devised and put into effect by the Interstate Commerce Commission and not by the railways. The railways later saw the need for adjustments and adopted the practice devised by the Commission.

THE CHAIRMAN: We will adjourn until tomorrow morning.

---The Commission adjourned at 4.45 p.m., to meet again at 10.30 a.m. on Friday, May 12, 1950.

A.R.

Canada
ROYAL COMMISSION
ON
TRANSPORTATION

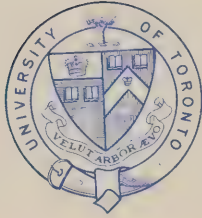
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ROYAL COMMISSION ON TRANSPORTATION

Friday, May 12, 1950

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
FRIDAY,
MAY 12, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D., - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

G.R. Hunter
Secretary

COUNSEL APPEARING:-

| | | |
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| F.M. Covert, K.C. | } | Royal Commission on Transportation |
| G.C. Desmarais, K.C. | | |
| C.F.H. Carson, K.C. | } | Canadian Pacific Railway |
| F.C.S. Evans, K.C. | | |
| H.C. Friel, K.C. |) | Canadian National Railways |
| J.J. Frawley, K.C. |) | Province of Alberta |
| J. Paul Barry |) | Province of New Brunswick |
| F.D. Smith, K.C. |) | Province of Nova Scotia |
| W.E. Darby, K.C. | } | Province of Prince Edward Island. |
| J.O.C. Campbell, K.C. | | |

Ottawa, Ontario,
May 12, 1950.

M O R N I N G S E S S I O N

ARGUMENT BY MR. SMITH (Cont'd)

THE CHAIRMAN: All right, Mr. Smith.

MR. SMITH: My lord, I was dealing with the question of horizontal increases when the Commission adjourned yesterday.

THE CHAIRMAN: What page is that?

MR. SMITH: At page 25. I had just finished page 25. It is the number on the margin in the corner, my lord.

THE CHAIRMAN: Yes. That is right.

MR. SMITH: I just wish to make one reference to a passage in the judgment or report in Ex Parte 168, which is not in the written argument. It is from Ex Parte 168, reported in 272 I.C.C. 695. I have already given you that page, but the reference to which I refer is at pages 707 and 708. In that passage the Commission states:

"We endeavoured in each of our reports to better the adjustment as between localities, commodities, and descriptions of traffic, according to the standards of the Interstate Commerce Act, while authorizing the carriers to make changes to secure increased revenues shown to be requisite."

It shows there the endeavour on the part of the Commission to adjust the increase so as to make it equitable.

THE CHAIRMAN: The Interstate Commerce Act?

MR. SMITH: The Interstate Commerce Act. Of course, there is in the Interstate Commerce Act, Section 15A, to which I will refer later, a section which lays down some rules as to rate making. I think it states that the Commission shall give due consideration, among other

factors, to the three matters.

THE CHAIRMAN: I am asking you about that because it is important.

MR. SMITH: I intend to refer to that - I was almost going to say ad nauseam - at length in my argument on the rate base, on those standards.

THE CHAIRMAN: Yes. Here you have apparently another Act which is not a Railway Act giving powers or imposing powers on the Board.

MR. SMITH: No. This is the Interstate Commerce Act which governs.

THE CHAIRMAN: Is that the only Act that governs the Commission?

MR. SMITH: Yes.

THE CHAIRMAN: There is no Railway Act of any sort?

MR. SMITH: No.

THE CHAIRMAN: There is just this one Act?

MR. SMITH: Yes.

THE CHAIRMAN: It is all-embracing then?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: I see.

MR. SMITH: I also wish to refer to a passage which gives, perhaps in a concise form, the principles which are followed with regard to the fixing of just and reasonable rates. I am trying to relate it to the question I am now discussing, of the incidence or impact of horizontal rate increases. This is the passage, and I will give it to the reporter.

THE CHAIRMAN: It is a passage from what?

MR. SMITH: A passage from the judgment in Ex Parte 166, which I have already given to your lordship. It is reported at 270 I.C.C., 403; and the references

are, in this particular instance, pages 443 and 444.

THE CHAIRMAN: That is Ex Parte what?

MR. SMITH: Ex Parte 166.

THE CHAIRMAN: Yes, we have that.

MR. SMITH: You have the reference now.

THE CHAIRMAN: That is page 453.

MR. SMITH: The pages of the reference are 443 and 444; the first page is 403.

THE CHAIRMAN: There is page 453 in my copy. Is that wrong?

MR. SMITH: That is another reference, my lord.

THE CHAIRMAN: Where is it to be put in? Is this reference you are giving us now to be put in on this page 25.

MR. SMITH: Yes. I think it would be a good place to put it in.

THE CHAIRMAN: I see we already have Ex Parte 266, Interstate Commerce Commission, page 453.

MR. SMITH: Yes. That was a passage I referred to before.

THE CHAIRMAN: You have some other pages?

MR. SMITH: Yes, some other pages; pages 443 and 444.

THE CHAIRMAN: On another point?

MR. SMITH: On another point.

THE CHAIRMAN: What is the other point?

MR. SMITH: The point is the long-haul and also governing principles which the Interstate Commerce Commission take into consideration.

THE CHAIRMAN: Does the Interstate Commerce Act define the long-haul?

MR. SMITH: No.

THE CHAIRMAN: It is their own definition?

MR. SMITH: Yes.

THE CHAIRMAN: I see.

MR. SMITH: It does not specifically relate to the long-haul, but I just want to show that Congress has recognized in the United States, and the Commission have given effect to, the principles which encourage the movement of traffic. Perhaps now if I read it, my purpose will become plainer:

"In view of the dominant role which the railroads have played in the development of the country, these rate structures have been the product primarily of the many forces which have played on rail transportation. They have not been perfect, but they have had a common purpose to accommodate the needs of Commerce, which possesses an ever-present tendency to grow in volume in the variety of the commodities which impose it and and/to expand the radius of its distribution. Shippers have constantly manifested a desire to reach out farther and farther into distant markets."

THE CHAIRMAN: Into what?

MR. SMITH: Into distant markets, my lord. To continue:

"Congress has recognized the importance of this factor in the rule of rate making, Section 15a." That is to have due consideration to the movement of traffic. Those are the words.

(Page 22410 follows).

THE CHAIRMAN: The rule of rate-making what?

MR. SMITH: The rule of rate-making. Perhaps I will give you section 15a, and then it will be clearer. It reads:

"In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates", and it goes on ^{"shall} "give due consideration" --

THE CHAIRMAN: Does it say modify and adjust such rates according to this or that?

MR. SMITH: "Modify, establish or adjust such rates."

THE CHAIRMAN: Does it say in accordance with this or that?

MR. SMITH: It goes on:

"In carrying out its powers the Commission shall give due consideration among other factors to the effect of rates on movement of traffic " -- That is the point I am stressing now. Then it goes on: " -- to the need in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

I am speaking now particularly of the requirement as to effective rates on the movement of traffic. I shall refer to the other considerations when I come to discuss the question of rate of return and rate base.

THE CHAIRMAN: Movement of traffic.

MR. SMITH: Yes.

"Shippers have constantly manifested a desire to reach out farther and farther into distant markets. Congress has recognized the importance of this factor in the rule of rate-making, section 15A."

THE CHAIRMAN: What is the rule of rate-making?

MR. SMITH: To give due consideration among other factors to the effective rates on the movement of traffic.

"Congress has recognized the importance of this factor in the rule of rate-making, section 15A, as well as in the Hoch-Smith resolution."

The Hoch-Smith resolution was a resolution passed by Congress in 1925. I will give you the Hoch-Smith resolution.

THE CHAIRMAN: Hoch-Smith -- those are the names of two Congressmen?

MR. SMITH: Yes, two Congressmen.

THE CHAIRMAN: 1925?

MR. SMITH: That was approved on January 30, 1925, United States Code, Title 49, Section 55.

THE CHAIRMAN: United States Code?

MR. SMITH: Yes, title 49, section 55. The resolution reads:

"It is by Congress declared to be the true policy of rate-making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move. It is required, in the investigation of the rate structure, which under that resolution it was mandatory for

us to institute, that in making any 'change, adjustment or redistribution' under the provisions of the resolution, we shall give due regard, among other factors, to ^{the} general and comparative levels of market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation."

Coming back to the passage I was reading from Ex Parte 166, I read the part that says :

"Congress has recognized the importance of this factor" --

That is the factor of reaching out farther and farther into distant markets.

" -- in the rule of rate-making, Section 15A as well as in the Hoch-Smith resolution. In no other country has there been such a degree of freedom of movement of commodities over great distances. Failure to recognize these characteristics in shaping the form, contour and substance of rate structures would be destructive of the interests of all concerned. We have taken steps from time to time on complaint and petition and on our own initiative to bring more order and balance into structures developed over a span of many years, but we have recognized and so far as possible have preserved the historic spirit and purpose of rates and rate structures. We have seen how dependent the shippers of many sections in our national economy are on the maintenance of

rate structures in whose formulation value of service considerations have played so large a part."

Then another passage:

"Rail rates, still the backbone of all transportation rates, are geared into the economic life of every section of the country. None illustrate this point better than the rates on such heavy moving commodities as lumber, citrus and deciduous fruits and iron and steel. The widely separated sources of these classes of traffic, and the desire of each producing area to share so far as possible in the markets of each section of the country, and the correlative desire of each market area to be able to draw from as many producing areas as possible, create a need for a level of rail rates and an adjustment between them which will move the traffic. Many producers, traders and consumers are wholly or mainly dependent on rail transportation."

COMMISSIONER ANGUS: Do you think that amounts to very much more than an elaboration of ^{the} value of service principle?

MR. SMITH: I think it illustrates my argument. I think perhaps the value of service principle is helpful to my argument for exceptions to horizontal increases. It shows that the rate-making body should ever be mindful of the movement of traffic and the interests of the producers and also of the consumers, because it takes them into consideration too. Now, perhaps answering Dr. Angus on that point, it is only proper for me to say in the discussion of the Hoch-Smith resolution it was said in Ex Parte 123, 226, I.C.C. 41, at page 77 --

THE CHAIRMAN: Ex Parte --

MR. SMITH: 123 -- that is 1938 -- 226 I.C.C.,
41, at page 77. It reads:

"The requirements so found in the Hoch-Smith resolution are but declaratory as to what our duties have been at all times, in the exercise of the rate-making function."

For that proposition the case of Ann Arbour Railway Company, 281 United States Reports, 658, is quoted.

"Ever since general revenue cases began to come to us we have given consideration to matters such as those indicated so far as they may throw light on the reasonableness and justness of the proposals at issue. It is also well settled that in proceedings of this character it is strictly within our province, and, in fact, under the provisions of Section 15a of the Act it is our duty, to give due consideration to the question as to whether rates proposed will so effect the movement of traffic... It is also settled that the mere increasing of rates does not necessarily increase revenue, either gross or net."

(Page 22417 follows)

THE CHAIRMAN: Having regard to what you have just read, and then looking on the other hand to what the Board of Transport Commissioners in Canada has said about its functions, do you see any difference in the jurisdiction, any limitation of the Canadian Board? -- that is, bearing in mind all this language you have read, what would you say to this? "It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic or economic conditions." Then again, later on, "A railway may put in development rates with a view to increasing traffic, but such rates, I submit, the Board has no power to put in," and so on. "The Board is not empowered by Parliament to act as an arbiter of industrial policy." Do all those statements, do you think, show that our Board has less power than the Interstate Commerce Commission?

MR SMITH: No, I really do not think so, my lord. Of course, my argument is directed to the disturbance of existing rate relationships which have existed by putting into effect a horizontal increase, which in my submission disturbs or disrupts that relationship; but I do point out that apparently the Interstate Commerce Commission under the value of service principle does take into consideration the considerations which I have mentioned, and in the judgments to which I have referred they have always taken those matters into consideration. It is just necessary to---

THE CHAIRMAN: I notice that the Hoch-Smith resolution has this -- you find that so often in the United States -- that limitation "so far as legally possible."

MR SMITH: Yes, my lord. It is only fair to say that in the Supreme Court judgment one could find perhaps an indication -- perhaps that is putting it mildly -- that in

their opinion it did not advance the position very much farther than the law was before.

THE CHAIRMAN: It is only a resolution---

MR SMITH: It is only a resolution, but still---

THE CHAIRMAN: It is expressly made subject to the law.

MR SMITH: Subject to the law, subject to such lawful rates.

THE CHAIRMAN: Well, it says "in so far as legally possible".

MR SMITH: "In so far as legally possible, and subject to such rates". But apparently, as I will show your lordship, it is still regarded as a matter to be taken into consideration by the Commission, and I will read passages from the judgments in 166 and 168 and perhaps other cases in which they take into consideration not only the factors which are specifically mentioned in the so-called rule of rate-making in section 15(a) but also the Hoch-Smith resolution.

THE CHAIRMAN: Are you going to argue that our Board has not only the power but also the duty to adopt the same considerations in fixing rates in this country?

MR SMITH: Yes, my lord.

THE CHAIRMAN: And that it has failed to do so so far?

MR SMITH: Yes, my lord, that is quite right.

THE CHAIRMAN: All right.

COMMISSIONER ANGUS: Mr. Smith, in a general way do you think that it is a good thing to give legislative directives or directives by resolution of the legislature to an administrative body. It to some extent diminishes its power, doesn't it?

MR SMITH: Well, of course, I do not know of any

authority we have by way of resolution under our practice, but I cannot see that the method in which it is done makes very much difference, Dr. Angus, if the principles which are laid down do not unduly fetter the rate-making body. If they are laying down a broad principle, as apparently was laid down in the Hoch-Smith resolution, I can see nothing harmful in such a way of doing it.

THE CHAIRMAN: Because they expressly say that they do not intend anything that is not in the law.

MR SMITH: Yes, my lord. It is so carefully worded, perhaps, that it loses its effectiveness.

THE CHAIRMAN: I suppose it is something similar to a preamble to one of our statutes..

MR SMITH: No, it seems to be a resolution.

THE CHAIRMAN: I know it is, but I am speaking of its effect. The Maritime Freight Rates Act is preceded by a preamble. Now, the preamble is not law; it just shows the reasons for the law that is about to be passed; but the preamble serves to show what Parliament intends to do.

MR SMITH: And in case of ambiguity it might be resorted to.

THE CHAIRMAN: Yes, but then you must have the specific power in the Act to do it just the same. You tell me, though, that you think that our Commission under our Railway Act has these same powers and has failed to observe them.

MR SMITH: Well, of course, their power is unlimited in any respect; it is just an implied power, because it is not exactly stated. It is expressly stated in section 325---

THE CHAIRMAN: Do you see any clash between the powers which you say the Board has and these declarations they have made themselves repeatedly, that they have nothing

to do with industrial conditions, industrial activities?

MR SMITH: I submit, sir, that that is merely an expression of opinion. I submit they have power.

THE CHAIRMAN: It is in the judgment, you see.

MR SMITH: Yes, I know, but I submit they have power, if they so do it, but they are limiting their powers, they are circumscribing their powers, by those decisions.

THE CHAIRMAN: That is what I want to know. Do you say that they in fact have the powers which they deny having in these judgments?

MR SMITH: I submit they have.

THE CHAIRMAN: Well, that is what I want to know.

MR SMITH: Yes, my lord.

THE CHAIRMAN: You say, then, there is a clash between what our Board has said and what its real powers are; is that what you say?

MR SMITH: Yes. I say that the judgments to which I have referred in the Interstate Commerce Commission apparently say that the Hoch-Smith resolution is really declaratory of the law of the United States.

THE CHAIRMAN: Well, assuming that to be the case, the point is, either our Board has or has not the powers that you wish them to have and to follow. Have you any amendment--

MR SMITH: I have an amendment, yes, my lord, I have an amendment; I will come to that in a moment. It will follow closely the provisions of the rate-making rule.

THE CHAIRMAN: You mean the United States rate-making rule?

MR SMITH: Yes, my lord, section 15(a). But of course---

THE CHAIRMAN: Wouldn't it be better to come to your amendment, then?

MR SMITH: Well, my lord, I will be there in just one moment.

THE CHAIRMAN: All right.

MR SMITH: Perhaps I could pass over page 26. Of course, I want to point out that the Board in the present case, there is no question as to their power in any event to grant exceptions to horizontal increases. That is not suggested for a moment.

THE CHAIRMAN: The point is, what considerations must they bear in mind if they do such a thing?

MR SMITH: That is the point. Such considerations as I have been advancing here from the---

THE CHAIRMAN: They must not entertain illegal considerations.

MR SMITH: Illegal considerations. That was only in the Hoch-Smith resolution, but of course, as your lordship knows, there have been in practically every rate increase, general percentage rate increase, exceptions as to coal and coke. Now, that followed the practice that was laid down in the United States in 1918, and, as I recollect, it has been carried out throughout. There is one exception, and that is quite a large exception, because a large amount of coal and coke---

(Page 22424 follows)

THE CHAIRMAN: Does anybody question the power of the Board to make - -

MR. SMITH: Oh, no, my lord -- yes, they put the converse, there was a question - -

THE CHAIRMAN: I mean our Board in Canada.

MR. SMITH: You remember, my lord, there was a case before the Supreme Court, Mr. Justice Kerwin as to the question. There was a question^{not}/as to the power to make exceptions as to horizontal increases, but the power to grant horizontal increases. Mr. Justice Kerwin in his judgment decided that the Board had power to grant horizontal increases.

THE CHAIRMAN: That doesn't say anything about their power to grant different sorts of increases.

MR. SMITH: No, my lord. Perhaps then if I may go - -

COMMISSIONER INNIS: Mr. Smith, it seems to me there is some pertinent information on page 26, if you would just go on in the regular way.

MR. SMITH: All right, my lord.

In the passage from the Judgment in the 21% Case (Pamphlet copy of Judgment, p. 65) to which I have already referred, the Board said that one difficulty with respect to the adoption of a varying or maximum increase was apparent, namely the lack of reliable traffic statistics from which to determine the additional revenue which would accrue from flat or maximum increases on particular commodities. The Board also stated that there was not on the record anything to enable any determination concerning the commodities and sections of the country and even the individual rates which could best bear the burden of an increase.

COMMISSIONER INNIS: That is a pretty important point.

MR. SMITH: I think it is.

THE CHAIRMAN: That is our own Board, yes.

MR. SMITH: Mr. Forsyth, at p. 5605 of Vol. 29 of the Transcript, suggested that if the Board thought that some traffic statistics were necessary in order for them to determine whether, as a matter of fact, the only workable and practical method was the horizontal increase, then somebody should have been asked to produce statistics and get them before the Board. He suggested that ultimately the Railways are the people who would have to furnish the information because they are the only people who would have it. And I respectfully submit that I agree with that suggestion.

COMMISSIONER INNIS: Is that true in the case of the Interstate Commerce Commission?

MR. SMITH: No, I don't think it is.

COMMISSIONER INNIS: They collect their own statistics?

MR. SMITH: I have quoted from the Majority Judgment in the 20% Case of September 20, 1949, and from the Judgment of Mr. Commissioner MacPherson of February 28, 1950, with respect to horizontal increases. These Judgments recognize, I submit, that the Board should consider the question of exceptions from horizontal increases. Mr. Commissioner MacPherson expressed the opinion that the railways should give also careful consideration to the question.

I suggest that this question is one of vital importance, as has been recognized in the United States. I have quoted from recent Judgments of the

Interstate Commerce Commission. I repeat what was stated in Ex Parte 166, that the application of a percentage increase often excludes the long-haul shipper from the common market or compels him to reduce his prices so that he has no profit.

Then I say that the railways themselves, in their proposals in Ex Parte 162 and 166, adjusted a combination of percentage increases to regional needs with certain maximum limits to lessen the unfavourable effect upon existing commercial relations and in some cases, stated flat amounts of increases.

In addition, they assured the Commission that they would proceed by voluntary discussion and co-operation with the shippers and representatives of the markets to devise and endeavour to put into effect such measures as would restore former competitive relations as completely as possible. These undertakings were given after there had been a very extensive study on the part of the Commission and of the Railways into the incidence of horizontal increases.

This I suggest emphasizes the point which I am endeavouring to make that both the Railways and the Board must, in order that the freight rate structure may be put on a proper basis, change their attitudes and adopt practices in conformity with those which have been followed for sometime in the United States.

I submit that there can be no possible doubt but that the cumulative effect of the recent horizontal increases has been the disturbance of many rate relationships.

I therefore suggest that Section 325 be amended as shown in the amendment.

That is the amendment which I have handed in. It differs somewhat from the amendment which was submitted earlier.

THE CHAIRMAN: This is your amendment?

MR. SMITH: Yes, my lord. It will be observed - -

THE CHAIRMAN: Pardon me a moment, before we take up your amendment, I see you seem to be saying here that the Canadian railways have never acted as the United States Railways.

MR. SMITH: That is what I say.

THE CHAIRMAN: Have they refused to?

MR. SMITH: Well, the attitude they have adopted, as I understand it, in the rate increases cases, was that this was the proper way to do it.

THE CHAIRMAN: What was the proper way to do it?

MR. SMITH: Horizontal increases.

THE CHAIRMAN: I know, yes, but they have never consented to meet with the shippers and discuss variations.

MR. SMITH: I won't say they have refused to meet individual shippers.

THE CHAIRMAN: So far as your knowledge goes.

MR. SMITH: Individual shippers, I won't say they have refused to meet individual shippers.

THE CHAIRMAN: You see, you say here that:-

"In addition, they assured the Commission that they would proceed by voluntary discussion and co-operation with the shippers

and representatives of the markets....."

MR. SMITH: That is, shippers generally.

THE CHAIRMAN: Yes,

".....to devise and endeavour to put into effect such measures as would restore former competitive relations....."

MR. SMITH: I say they have refused to do that. What Mr. Jefferson said in his evidence is that if anybody had a complaint, they would discuss it with him. That is as far as they go, as I understand it.

THE CHAIRMAN: All right then, what about your amendment?

COMMISSIONER INNIS: Isn't there a very serious problem then that the Board is not equipped to get these statistics?

MR. SMITH: That is right, it is not equipped, and it has not endeavoured - -

THE CHAIRMAN: We had yesterday the case where the Board said that neither party brought them the information and therefore they proceeded - -

MR. SMITH: I submit that that was not a proper attitude for an administrative body.

THE CHAIRMAN: In that case you I suppose, say that the Board should not expect the parties to bring all the information.

MR. SMITH: That is right.

THE CHAIRMAN: But be alive to what is required and be equipped with means of acquiring it?

MR. SMITH: Quite. Now, as I said yesterday, I am not proud of this effort of mine, my lord. It is merely designed with a view to trying to be helpful. It is suggested that notwithstanding anything contained in

this Act, amend Section 325, sub-section 5 by making the present provisions of that sub-section as clause (a).

THE CHAIRMAN: Pardon me a moment, you would strike out what is there now, would you?

MR. SMITH: No, I don't strike out. The present sub-section 5 relates to the Crow's Nest rates.

THE CHAIRMAN: That is, the proviso does.

MR. SMITH: Well, the whole sub-section 5, and I would amend sub-section 5 by making the present provisions of that sub-section as clause (a) and I would add (b) and (c), if I might here - -

THE CHAIRMAN: Yes, all right.

MR. SMITH: It will be observed that I do not suggest that the Statute should prohibit increases in freight rates by horizontal increases.

I submit, however, that there should be legislation requiring the Board to give consideration to measures designed to correct maladjustments in the rate structure and to restore rate relations which have been disturbed by percentage increases.

I am fully conscious of the imperfections of the proposed amendments but trust at least that it will be found helpful when your Commission considers the very important question of the incidence of horizontal increases.

My new clause (b) reads:-

"(b) Notwithstanding anything contained in this Act the Board in the exercise of its powers to fix, determine and enforce just and reasonable rates....."

Now, that is very close to the words in 15 (a) of the sub-section.

".....shall give due consideration, among other things; to the effect of rates on the movement of traffic by the company for which the rates are fixed and determined...."

THE CHAIRMAN: Pardon me a moment, the railways?

MR. SMITH: Yes, "the company" I think means "the railway company" in the Act. I think that is the word which is used, "company".

THE CHAIRMAN: Oh, yes, they do.

MR. SMITH: Then I add:-

".....to the effect of rates in disturbing rate relations....."

THE CHAIRMAN: Well, you say:-

".....shall give due consideration, among other things, to the effect of rates on the movement of traffic by the company".

Yes, "to the effect of rates in disturbing rate relations".

MR. SMITH: And then the last clause:

".....and to the necessity for the maintenance in the interest of the public of adequate and efficient railway transportation service at the lowest cost consistent with the provision of such service."

That, of course, does not deal with this problem, but is taken from the provisions of Section 15 (a).

THE CHAIRMAN: Yes.

MR. SMITH: Now then, I have here in (c):-

"The Board shall, upon the application by or on behalf of any party interested, or may of its own motion, for the purpose of considering the effect of rates in disturbing rate relations, inquire into the incidence of all or any rates fixed, determined or enforced since the 7th day of April, 1948, and shall change and alter such rates in such manner and to such extent as it may consider necessary or expedient in order to restore rate relations which it may find to have been unduly disturbed."

THE CHAIRMAN: Pardon me just a moment, would that have the effect of adding to what they have already been directed to do in that Order in Council, general revision?

MR. SMITH: I think so, my lord, because I think that deals with the equalization of rates. This is in connection with the disturbance of rate relations.

COMMISSIONER ANGUS: But to equalize rates, if that equalization is subject to an obligation that in doing so you are not to disturb rate relations, equalization itself might disturb it.

MR. SMITH: Well, there is no provision by any Statute as to the equalization of rates. It is merely an investigation on the part of the Board into the question of equalization of rates.

THE CHAIRMAN: What is?

MR. SMITH: This Order in Council is not a Statute of course. As I was pointing out to Dr. Angus,

it is merely a direction from the Government for the Board to inquire into the question of the equalization of rates, but this is a provision in the Statute which would render it obligatory upon the Board to - -

THE CHAIRMAN: Yes, but this investigation they have been directed to make is with a view to the establishment - -

MR. SMITH: Yes.

THE CHAIRMAN: Of a fair and reasonable rate structure which will under similar circumstances and conditions be equal in its application to all persons and localities, subject to special statutory provisions.

MR. SMITH: That, I submit, is a direction for the Board to investigate into the question primarily of equalization of rates. I don't think it touches this point, and in any event what I am suggesting is an amendment to the Statute, not a matter of investigation.

COMMISSIONER ANGUS: I am fully clear about that, but what I meant was this, that we have had before us a good many recommendations for equalization, I mean, looking on equalization as desirable. Now, is this something which would make an exception, as it were, to the principle of equalization -- make it in a very authoritative way, of course, by Statute.

MR. SMITH: Well, of course, this question of equalization is a very nebulous subject, as I see it, and I must confess that I don't know all the ramifications of equalization. What I am here endeavouring to provide for is against an evil which I think exists in the present law, and which I think can only be done by, perhaps in view of the attitude which the Board has taken previously, imposing some obligation.

THE CHAIRMAN: Well, it is interesting to ~~note~~ that the same sentence calls upon the Board to make this investigation with a view to establishing equalization by a fair rate structure.

MR. SMITH: Yes.

THE CHAIRMAN: The reason for it, that there have been complaints against the horizontal rate method.

MR. SMITH: I see.

THE CHAIRMAN: The Committee observed that one of the representations made by the petitioning Government is that a horizontal or flat percentage increase of 21% in all freight rates disregards and accentuates existing disparities in the freight rate structure, and that this had already been the subject of a direction to the Board. I presume that is the direction on certain appeals:-

"As set out in an Order in Council.

(and it gives the number) in which the Board was permitted to make a thorough investigation of the rate structure with a view to the establishment of a fair and reasonable rate structure which will under substantially similar circumstances and conditions be equal in its application to all persons and localities." That is, the Government says that certain persons and localities complain that this horizontal increase has been - -

MR. SMITH: I don't know if the Government properly construed that complaint of the Provinces, and I don't want to be bound by action of the Government in the terms of the Order in Council. What I am coming

to here is that to this Commission which was created after that Order in Council - -

THE CHAIRMAN: I know, but we want to find out what the Board has been directed to do, you see, but you are against horizontal increases -- not always?

MR. SMITH: To a certain extent.

THE CHAIRMAN: Sometimes, put it that way. The Cabinet assumed that all these petitioners of these provinces were against horizontal increases.

MR. SMITH: Yes, I think that is quite right. They all joined - -

THE CHAIRMAN: That includes Nova Scotia?

MR. SMITH: That includes Nova Scotia.

THE CHAIRMAN: Then therefore they say that since everybody complained about these horizontal increases therefore it says to the Board: "You go on and conduct a general investigation and establish a rate . structure which shall be equal." You have the word "equal" here and that is a hard word to get at.

(Page 22434 follows)

MR. SMITH: Perhaps, my lord, it might be of interest to the Commission if I just went back a little on the history of recent events. A general freight rate investigation was ordered after the decision . in the 21% Case and before --

THE CHAIRMAN: October 12, 1948.

MR. CARSON: April 7, 1948.

MR. SMITH: April 7.

THE CHAIRMAN: I am just reading from it, "Certified to be a true copy of a minute of a meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on 12th October, 1948.

MR. CARSON: This is P.C. 1487.

THE CHAIRMAN: There are two, maybe.

MR. SMITH: Yes, there are two. There is the Order in Council on the --

THE CHAIRMAN: They have given me two here. One is April 7, 1948.

MR. SMITH: Yes, that is it.

THE CHAIRMAN: That is quite right. The other one is October 12. But the language, so far as I can see, is the same.

MR. SMITH: I think what your lordship will find is that they quote the other one.

THE CHAIRMAN: I have it now. The one of April 7, where they heard the appeal.

MR. SMITH: No, my lord. The April 7 was the one which directed the Board to make the general investigation.

THE CHAIRMAN: Oh, yes. Then the later one --

MR. SMITH: Between that date and the later one, there has been an appeal asserted to the Governor in Council from the judgment.

THE CHAIRMAN: Yes.

MR. SMITH: And then after the hearing before the Governor in Council of that appeal, the other Order in Council was issued in which the former one is recited.

THE CHAIRMAN: The first Order in Council gave them the same direction, to hold this general investigation "with a view to the establishment of a fair and reasonable rates structure", and so on. Then the second Order in Council states since then as we have had representations against horizontal increases, the Board has been instructed to conduct this investigation, as if that was an answer to the complaint against horizontal increases.

MR. SMITH: I think that if you will look at it, my lord -- and I do not know if your paging is the same as ours --

THE CHAIRMAN: No. I just have the loose copy.

MR. SMITH: The Order in Council P.C.4678 which is dated October 12, 1948, was after the argument before the Privy Council.

THE CHAIRMAN: Yes.

MR. SMITH: It reads: In their petition, "the petitioning governments represent that ----" These are the grounds which were asserted to have been contained in the original judgment, the judgment in the 21% case. And one of these grounds, ground (j) is that "The Board erred in authorizing a horizontal, or flat percentage, increase of 21% in all freight rates, disregarding and accentuating existing disparities in the freight rate structure, and the Board further erred by failing to limit the authorized increase to flat maxima amounts."

THE CHAIRMAN: That is the one the government picked out. The order-in-council states:

"The committee observe that one of the representations---"

MR. SMITH: Yes -- "one of the representations made by the petitioning governments is that a horizontal

or flat percentage increase of 21% in all freight rates disregards and accentuates the existing disparities in the freight rate structure, and that ^{this} had already been the subject of a direction to the Board, as set out in Order in Council P.C. 1487 of April 7, 1948 in which the Board was directed to make a thorough investigation of the rates structure of ^{and} railways and railway companies which are under the jurisdiction of Parliament with a view to the establishment of ^a fair and reasonable rates structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities subject to such special statutory provisions as affect freight rates.

If you will look, my lord at the last paragraph of that Order in Council you will find:

"The Committee therefore advise that the Board be directed to consider in the light of such changes in conditions of operations as have or will have taken place, the complaints ---

I submit that is all the complaints, A to J.

THE CHAIRMAN: Oh, yes.

MR. SMITH: It continues:

"set forth in the petition concurrently with the pending application for a further increase in freight rates, --"

That is the 20% increase so-called.

"--and that the disposition by the Board of the matters set forth in the petition and any revision of Order No. 70425 that may result ---

That is the judgment in the 21% case.

"--from such consideration be made by the Board in relation to its disposition of the said pending

application."

THE CHAIRMAN: But the language shows, does it not, that in the opinion of the government this question of horizontal or flat percentage increases was wrapped up in the question of the equalization of rates?

MR. SMITH: There is no doubt about that.

THE CHAIRMAN: That is the answer to the question. There is this connection between these two.

MR. SMITH: I suppose the question of equalization enters into it; I suppose you have to take into consideration all rates.

COMMISSIONER ANGUS: As I understand it, the horizontal increases have been challenged on two quite different grounds. One is that they accentuate existing disparities, like the mountain differential or prairie ^{the} scale, and the remedy is equalization. The other is one you have given, that they distort market relationships and that those should be restored. Those two lines of criticism lead to two lines of suggested remedy. One is equalization. The other is your amendment. I am asking if those two things are consistent, if you can have both.

MR. SMITH: I am not asking for equalization.

COMMISSIONER ANGUS: No. But we are faced with the two representations.

MR. SMITH: What I am asking for is the restoration of rate relationships.

COMMISSIONER ANGUS: I am quite clear about that. But does that mean that it should be an exception to any equalization that takes place?

MR. SMITH: I suppose it should.

THE CHAIRMAN: Would what you are asking for be a departure from horizontal increases?

MR. SMITH: It would be a departure in certain instances. I am not asking for a statutory prohibition of horizontal increases. But what I am asking for is that, in such cases as relations are disturbed, ^{be} measures provided by exception, by putting into effect exceptions from the general increase, ^{so} as to restore the rate relations. That is what I am asking for.

COMMISSIONER ANGUS: One more question. It is really to define the bearing of this on the other representations made by other Counsel. I have no doubt that when the mountain differential was abolished, some rate relationships were distorted and that some people got advantages now. Some people in Vancouver get advantages in the Edmonton market that they had not had before, to which the Edmonton people objected. Would the affect of your amendment be to re-open that question in order to ^{restore} those existing rate relationships?

MR. SMITH: I do not think so.

THE CHAIRMAN: What do you want done? If you tell us specifically what you want done, it would help us.

MR. SMITH: For instance, let us take the case of a producer in Nova Scotia and a producer in Manitoba

THE CHAIRMAN: When you say "producer", what do you mean?

MR. SMITH: A man who is shipping goods to a common market.

THE CHAIRMAN: You said "a producer."

MR. SMITH: A producer.

THE CHAIRMAN: What kind of producer?

MR. SMITH: Any kind of producer; a producer of primary goods or a manufacturer.

THE CHAIRMAN: Either a ^{producer} primary or a manufacturer.

MR. SMITH: Yes. He is shipping goods to a common market in competition.

THE CHAIRMAN: What market? To Montreal?

MR. SMITH: Yes, we will say Montreal or Toronto.

THE CHAIRMAN: Montreal or Toronto.

MR. SMITH: And the rate relationship there, as pointed out, where one was competing ---

THE CHAIRMAN: Who are his competitors there and where are they?

MR. SMITH: We will say there is a competitor in Manitoba. It is not a great manufacturing centre, but we will say there is a competitor in Manitoba, shipping to a common market in Ontario; and the freight at the time before the horizontal increase was \$1.00.

THE CHAIRMAN: In both cases?

MR. SMITH: A dollar in one case and say fifty cents in the other case.

THE CHAIRMAN: In the Manitoba case?

MR. SMITH: I will take it against my province
for the time being. ^{Let us} say that Manitoba was \$1.00 and Nova
Scotia was .50¢. It does not make any difference. ^{Then} there is
a 20% increase. In one case the increase is .20¢ ⁱⁿ and the
other is ^{it} .10¢. That difference affects, I submit, the
competitive position of the two persons. I want some pro-
tection against that.

THE CHAIRMAN: That is, in that case you are against
the horizontal increase ?

MR. SMITH: Yes, the full extent of the horizontal increase. I want some protection. I want a maximum on that. It may be that it would only be fair not to put it on an exactly equal basis, but put us on such a basis as we can compete on a fairly reasonable basis.

THE CHAIRMAN: The Board has power to give you that now, has it not?

MR. SMITH: Surely. I think the Board has power

to give that. What they have done is that they have just taken the easy method. That is my objection. They have taken the easy method, as pointed out by Sherrington in that English book to which I referred. They just slapped on an increase. That is the easy way to get it. They say, "We have not any statistics, and therefore that is the only way we can do it." I submit that is not carrying out their obligations under the present law. It may be perhaps that no legislation is required, if they would endeavour---

THE CHAIRMAN: Have not the Board, in the 21% Case, heard all that sort of argument?

MR. SMITH: I beg your pardon?

THE CHAIRMAN: The Board, in the 21% Case, listened to arguments of that kind.

MR. SMITH: Yes.

THE CHAIRMAN: And decided --

MR. SMITH: that they did not have statistics.

THE CHAIRMAN: That is it. They did not say they did not have power.

MR. SMITH: No, that they did not have statistics. The Board might have been right. I am not at the present moment arguing the 21% Case or the 20% Case. Perhaps a revenue case is not the proper case to deal with these questions. But what I am suggesting is that the Board should be continually making a study of these questions, that they should have available statistics, and that they should be consulting with the railways to look into the incidence or effect of a horizontal increase and therefore, as they had in the United States --

THE CHAIRMAN: You mean without any complaint from anybody?

MR. SMITH: Yes, without any complaints, or where there are, complaints.

THE CHAIRMAN: Oh well, where there are complaints, it is easier.

MR. SMITH: Where there are complaints, there would be private complaints.

THE CHAIRMAN: Where there are complaints, they might specify localities and so on, and that is much easier.

MR. SMITH: Yes.

THE CHAIRMAN: Do you think they can look around all over Canada and say, under their own motion, --

MR. SMITH: As a matter of fact --

THE CHAIRMAN: Pardon me - that some shipper, although he does not know it, is as a matter of fact suffering from these rates and therefore ^{they} are going to change it." Is that the idea?

MR. SMITH: No, my lord. I do not say that. But the Board by this time know something about conditions which exist in the major industries in Canada and must know

something of the local conditions. It is my suggestion that they should be making a study of these conditions with a view to ^{being} in that position; and that study means that there should be constant conferences not only with the railways but also with the large shippers, to ascertain what the effect of the rate changes are; that they should be building up a body of information, which undoubtedly they have in the United States; because here all the railways are able to come in and join in an application for an increase as in Ex Parte 162 and 166, in which there are perhaps exaggerations. There is a multitude of exceptions. There you have an informed commission, one informed of conditions throughout the length and breadth of the country.

(Page 22445 follows).

Here we have the easiest method of getting money for the railways just put in by the stroke of a pen. My suggestion is that the method is just as important, and perhaps more important, than the quantum of the freight rates that are paid because it affects the competitive position of shippers all over Canada.

THE CHAIRMAN: That is right, but you will notice that in all these American declarations you bring to us they have arisen in some case or other, ex parte this and ex parte that.

MR. SMITH: These are general freight rates cases.

THE CHAIRMAN: If the Board were to be expected to have this view of the whole of Canada all the time before it, and if it found something that should be corrected and corrected it, is there not a possibility that they might find some ^{things} to correct and not see a great many other things?

MR. SMITH: That is quite possible, but at least there should be --

THE CHAIRMAN: Whereas when they wait for somebody to complain then they know where to go and they know what to do. All the cases you have quoted to us were cases contested before the Interstate Commerce Commission.

MR. SMITH: Yes, but what these cases say is that in between these cases there is this constant study being made.

THE CHAIRMAN: Information is being gathered.

MR. SMITH: It is being gathered in between these cases.

THE CHAIRMAN: Does the United States Commission by itself without anybody applying to it make orders on the railways reducing rates or increasing rates without any

request from anybody?

MR. SMITH: I assume -- I have not looked at the Interstate Commerce Commission Act.

THE CHAIRMAN: That is what you say ought to be done?

MR. SMITH: Yes, sir. There is no doubt they have the power.

THE CHAIRMAN: I am not talking about power. I want to know whether they do it in effect.

Having received information from its own people, does the United States Commission order railways to make a decrease from one point to another?

MR. SMITH: In some commodity or some rate, yes, certainly.

THE CHAIRMAN: Without hearing anybody?

MR. SMITH: Usually I suppose they would give them an opportunity to be heard. I think, however, they have the power to act on their own motion, but I think they would give both sides the right to complain.

THE CHAIRMAN: In what you have in mind this would be simply that the Board would have this clear view all the time of all relationships.

MR. SMITH: I am merely speaking of the study they would be making. When they come to act on the information or statistics they obtain --

THE CHAIRMAN: When would they come to act, when somebody asks them to act?

MR. SMITH: Yes.

THE CHAIRMAN: I understand that, but I thought you were saying they should act whether or not anybody asked them.

MR. SMITH: And they can act and do act of their own motion.

THE CHAIRMAN: Who does?

MR. SMITH: The Commission.

THE CHAIRMAN: How do they act of their own motion?

MR. SMITH: By adjusting the rate accordingly.

I think the decision to which I referred, Ex Parte 168, shows what they take into consideration.

THE CHAIRMAN: I am not -- all right, go on.

MR. SMITH: "Since the interim increases

were authorized in our former report in this proceeding there has been some decline in the expected volume of traffic ----"

Then they say:

"For reasons already stated, we consider it necessary, in carrying out our duties under Section 15a(2) of the Interstate Commerce Act, in the light of the direction of the national transportation policy of Congress, now to permit further increases in rates." --

THE CHAIRMAN: Was there an application before them for an increase?

MR. SMITH: Yes, my lord.

" -- to permit further increases in rates and charges to be filed and ^{to} become effective without suspension at an early date. We are mindful of the ^{showing} made by protestants as to various rate adjustments, as adverted to in this report, and it is to be understood that our conclusion and the findings which follow will be without prejudice to subsequent examination of the reasonableness and lawfulness of any particular rate or rate structure increased, "as herein authorized".

They reserve the right to consider this question.

THE CHAIRMAN: Did our Board not also reserve

the same right in the 21% case?

MR. SMITH: There is provision on particular application.

THE CHAIRMAN: What is the language that immediately follows what you have read there?

MR. SMITH: "Since an interim increase were authorized in our former report/^{in this proceeding}there has been some decline in the expected volume of traffic from the volume forecast at the first hearings. We have endeavoured to appraise the extent of that decline, and have taken it into account in our estimate of the increased expenses incident to the adjustment to a 40-hour week, which we have placed at \$380 millions, or about \$70 millions less than the estimate made by the President's Emergency Board in December last. Experience will show the actual cost of this item of expense, but meanwhile substantial outlays therefor must be made. The anticipated revenue from the increases in rates and charges herein authorized and found to be just and reasonable is necessary to aid petitioners in meeting these outlays."

Then they say:

"For reasons already stated, we are mindful of the showing made by protestants as to various rate adjustments, as adverted to in this report, and it is to be understood that our conclusions and the findings which follow will be without prejudice to subsequent examination of the reasonableness and lawfulness of any particular rate or rate structure increased as herein authorized."

THE CHAIRMAN: That does not answer the question. How will they proceed? Will they ask until somebody asks them to change it?

MR. SMITH: I think it is implicit in that that they will do it themselves.

THE CHAIRMAN: Well, do you know as a matter of fact that they do?

MR. SMITH: That is my understanding. I cannot speak with any confidence about it because it is not clear from the judgment.

THE CHAIRMAN: You think our Board ought to be put in a position where it can act for itself, order an increase or decrease without any application by anybody?

MR. SMITH: That is right. That is what I suggest. Then they add:

"We may add that, as the petitioning carriers have the burden-----"

-- it puts the burden on the railways and I assume it is not assumed by the railways in Canada --

"---of initiating and maintaining rates -----"

THE CHAIRMAN: Does the Commission fix what we call a ceiling on rates down there?

MR. SMITH: Yes, they fix both a ceiling and a floor, maximum and minimum.

"---the burden is on them in good faith and with all possible promptness and in a spirit of cooperation to devise and suggest for the consideration of the shipping public the rates which in their judgment will correct maladjustments.

That is the point. I have already made the statement that there is not only an obligation on the Board but also a burden on the railways.

THE CHAIRMAN: Put there by the Commission?

MR. SMITH: It is put there by the Act.

THE CHAIRMAN: You say the Commission have said that. You have just read that?

MR. SMITH: I say that in the interpretation of the law --

THE CHAIRMAN: I did not quite catch that. Maybe it is there.

MR. SMITH: It is not a burden placed by the Commission; it is a burden placed by the law.

THE CHAIRMAN: Perhaps our Act should be amended.

MR. SMITH: "We may add that as the petitioning carriers have the burden" --
I submit that means under the law.

THE CHAIRMAN: It may mean that the Commission will put the burden on them.

MR. SMITH: I submit not, that as the petitioning carriers have the burden of initiating and maintaining rates that comply with the Act.

THE CHAIRMAN: What does the Act say about the burden?

MR. SMITH: I have not the Interstate Commerce Act. There is a provision.

THE CHAIRMAN: Would that be a good provision to put in our Act, that the railway shall have the duty of doing these various things?

MR. SMITH: It might be. I submit, however, the onus is still on the railways.

THE CHAIRMAN: Why do you assume that?

MR. SMITH: All rates must be just and reasonable.

THE CHAIRMAN: Yes, it is the duty of the Board to see to it, to fix and maintain just and reasonable rates. You are arguing then that the railways should keep in touch with the shippers?

MR. SMITH: Yes.

THE CHAIRMAN: Do you know of anything in our Act which compels the railways to do that?

MR. SMITH: No, there is no express provision which compels the railways.

THE CHAIRMAN: Do you want an express provision?

MR. SMITH: Yes. I suggest that there is that burden on them now under the Act, that implicit in the requirement that all rates must be just and reasonable there is a burden on the railways to have rates which are just and reasonable.

THE CHAIRMAN: You see the terms "just and reasonable" are those which say that it is the duty of the Board to fix and maintain just and reasonable rates. The Board has fixed rates over and beyond which no railway can go.

MR. SMITH: That is in amount?

THE CHAIRMAN: Yes.

MR. SMITH: Maximum rates.

THE CHAIRMAN: Are those not assumed to be just and reasonable rates? The railways cannot exceed them. They can go beneath them.

MR. SMITH: That is quite right. I would have to look at the section in the Interstate Commerce Act on the question of just and reasonable rates. It is a question of interpretation, as I understand it. Perhaps I was misled by the question of onus.

THE CHAIRMAN: Take this case. Here is a rate, we will say, on some commodity from one point to another and

the Board authorizes a charge of \$1. The railway asks for 90 cents, not \$1 and the shippers say that is too high, that they cannot afford to pay 90 cents. I am not talking now about any discrimination. Would not the answer be that the Board has authorized a rate of \$1 and therefore you cannot say it is unjust and unreasonable. If you want to have it reduced go to the Board. Is that not the condition today?

MR. SMITH: I was going to say perhaps I was misled by the question of onus. It was admitted in the 20% case that the onus to show that an increase was necessary was upon the railways. That, of course, is a different question from the one raised by your lordship. I had not examined very deeply into this question, and the position is not the same in the United States as Canada. If there is not a duty upon our railways under the present Act in my submission there should be such a duty similar to that imposed upon the railways in the United States.

THE CHAIRMAN: Then will you give us the provision in the Interstate Commerce Act?

MR. SMITH: May I give you that later? I shall have to look at that question, my lord. I am not prepared to discuss it.

THE CHAIRMAN: You should make it clear exactly what you want in the way of law.

MR. SMITH: Yes, what I want in the way of law. I said that I was not proud of my workmanship in this --

THE CHAIRMAN: I know. If you are assuming that the railways must do this and that, and then there is no legal authority behind it your assumption would not go very far.

MR. SMITH: That is quite right. In my submission there should be that obligation upon the railways. I will

at least go that far.

THE CHAIRMAN: To keep in touch with shippers continuously with a view to making necessary adjustments of rates, and so on.

MR. SMITH: That is right.

THE CHAIRMAN: An overseeing power of the Board in all cases.

MR. SMITH: Apparently that is the situation in the United States, and I think our Board should have a similar power here, if they have not already got it.

(Page 22457 follows)

THE CHAIRMAN: In your amendment you are still on (b), are you not?

MR SMITH: (b), yes, my lord.

THE CHAIRMAN: " . . . the Board in the exercise of its powers to fix, determine and enforce just and reasonable rates shall give due consideration, among other things, to the effect of rates on the movement of traffic by the company for which the rates are fixed and determined, to the effect of rates in disturbing rate relations," --

Is that the right word?

MR SMITH: I think so, my lord.

THE CHAIRMAN: Not "trade relations"?

MR SMITH: No, my lord. I think that is the word that is commonly used.

THE CHAIRMAN: " . . . to the effect of rates in disturbing rate relations, . . ."

That must mean new rates disturbing old relations.

MR SMITH: For instance, the words were used in these cases, speaking about disturbing pre-existing relations.

THE CHAIRMAN: Disturbing what?

MR SMITH: Pre-existing relations.

THE CHAIRMAN: What relations?

MR SMITH: The words, I say, used in 276 -- I am just endeavouring to answer your question as to the word "relations" -- they speak of disturbing pre-existing relations beyond the possibility of remedial correction, so as to maintain---

THE CHAIRMAN: Wouldn't that mean market relations, trade relations?

MR SMITH: "To devise and endeavour to put into effect such measures as will restore former competitive

relations as completely as possible . . ."

"The rates which in the judgment will correct maladjustments . . ." -- in another sense.

"The application of a percentage increase to both long and short haul compelling competing shipments results in widening the amount of the difference between the rates . . ."

"As to exclude the long haul shipper from the common market . . ."

THE CHAIRMAN: Well, I would like to make sure of this language -- "the effect of rates in disturbing rate relations".

MR SMITH: Yes. In this proceeding it is shown -- I am quoting from 266 I.C.C. at 537:

"In this proceeding it was shown that the petitioners decided upon a combination of percentage increases"---

THE CHAIRMAN: That is the railways, is it?

MR SMITH: That was the railways, yes, my lord. -- "adjusted to regional needs with certain maximum limits to preserve traffic and lessen the unfavourable effect upon existing commercial relations and in some cases stated flat amounts of increase. They undertook the maintenance of the largest amount of traffic possible for their lines as against competitive interests or the loss of traffic or substituted service."

THE CHAIRMAN: I notice you read there "commercial relations".

MR SMITH: Yes, my lord, "commercial relations".

THE CHAIRMAN: I am wondering whether that is not what you mean here. You say, "the effect of rates in disturbing rate relations".

MR SMITH: Yes, my lord.

THE CHAIRMAN: You see, I am not sure that that could be given a meaning.

MR SMITH: "Many questions of preference and prejudice between localities and commodities are claimed" --

questions of prejudice between localities and commodities -- that is another expression used. I think the word "relations" is right. Perhaps "commercial relations" might be better.

THE CHAIRMAN: You had better look into that.

MR SMITH: Yes, my lord.

THE CHAIRMAN: Because I do not see what it means.

MR EVANS: I think, if I may help my friend, it undoubtedly means rate relationships.

THE CHAIRMAN: Well, it says "the effect of rates in disturbing".

MR EVANS: I am not going to clear up all my friend's difficulties, but I think what he is talking about are rate relationships.

THE CHAIRMAN: I know, but he talks about it this way; he says, investigate the effect of rates.

MR SMITH: Well, I think that is wrong; but it is the effect of increases.

THE CHAIRMAN: One of you must be wrong, because---

COMMISSIONER INNIS: Don't you mean the effect of new rates?

MR SMITH: Rate increases were what I had in mind, of course.

THE CHAIRMAN: Do you think it means rate adjustments?

MR SMITH: Rate adjustments, yes, that is better, because it works both ways -- fairer to my friends.

THE CHAIRMAN: The effect of rate changes.

MR SMITH: Rate changes, yes, my lord.

THE CHAIRMAN: In disturbing rate relations.

MR SMITH: Yes, my lord.

THE CHAIRMAN: Well, that may give it a meaning.

All right, then, go on.

MR SMITH: "(c) The Board shall, upon the application by or on behalf of any party interested, or may of its own motion, for the purpose of considering the effect of rates in disturbing rate relations, inquire into the incidence of all or any rates fixed, determined or enforced since the 7th day of April, 1948 and shall change and alter such rates in such manner and to such extent as it may consider necessary or expedient in order to restore rate relations which it may find to have been unduly disturbed."

THE CHAIRMAN: Does that mean all competitive rates, agreed charges, commodity rates, and everything?

MR SMITH: I think it would.

THE CHAIRMAN: Does "fixed, determined or enforced" mean by the railways?

MR SMITH: I am using the words of the Board, "in the exercise of its power to enforce, determine and enforce". Those are the words used in sub-section 5.

THE CHAIRMAN: You only mean, then, rates which they have themselves authorized?

MR SMITH: Yes, my lord.

THE CHAIRMAN: Well, that is one thing.

MR SMITH: It would be the horizontal increases.

THE CHAIRMAN: I beg your pardon?

MR SMITH: It would be the horizontal increases.

THE CHAIRMAN: Well, all or any rates fixed, determined or enforced since the 7th day of April, 1948.

MR SMITH: Yes, my lord.

THE CHAIRMAN: By order of the Board.

MR SMITH: By order of the Board, yes, my lord; that is what I have in mind.

THE CHAIRMAN: Fixed, determined or enforced by order of the Board.

MR SMITH: By order of the Board.

THE CHAIRMAN: You are sure you mean that? -- because I suppose that the railway, with the power to fix competitive rates and other special rates, may have done some of that kind of work since the 7th day of April, 1948.

MR SMITH: Yes. Of course, the competitive rates were raised 15 per cent -- not raised 15 per cent, but the competitive rates were covered by the orders of the Board.

THE CHAIRMAN: The Board then may look into these things in order to restore rate relations which it may find to have been unduly disturbed. That is, first you have certain rate relations which were there pre-existing, and then changes in the rates were made, and the Board finds that those changes disturb unduly---

MR SMITH: Yes, my lord.

THE CHAIRMAN: ---former relations.

MR SMITH: Yes, my lord.

THE CHAIRMAN: To somebody's detriment, I suppose.

MR SMITH: Yes, my lord.

THE CHAIRMAN: So they restore them.

MR SMITH: To such extent and in such manner -- perhaps that is not very good either. You cannot restore it to such extent, I suppose. As I said, my lord, I am not proud of my handiwork. Restore, I suppose, means a hundred per cent restorable.

COMMISSIONER ANGUS: Has the word "incidence" in paragraph (c) the same meaning as "effect"? It is not used

in its ordinary sense, is it, that he pays the rate?

MR SMITH: That was not the sense I meant it in.

THE CHAIRMAN: You mean the effect?

MR SMITH: It is really the effect. "In considering the effect shall consider the effect" -- I just use a synonym, I think, perhaps.

COMMISSIONER INNIS: I am wondering if there is not some inconsistency, Mr. Smith, in that amendment (c) and the statement which you have made on pages 20 and 21, with regard to the deficiencies of the Board in having sufficient statistics to carry out such a study.

MR SMITH: Well, if this section became law, then I think they would have to have such staff as would enable them to get that information. Is that what you have in mind?

COMMISSIONER INNIS: Well, I do not think that any staff could collect the information once the time is past. If you intend to collect the information from now on, that is a different thing.

MR SMITH: No, but, you see, there is only a matter of two years, and I think the information which would be obtained now should be such as would enable the Board to have information as to the effect of say the 21 per cent increase. It is not such a long period of time, Dr. Innis.

COMMISSIONER INNIS: The trouble is, if you do not collect the statistics at the time, however, it is extremely difficult, in fact impossible, to go back once the time is past.

MR SMITH: Well, of course there is that question, but there has not been such a great length of time. You may not be in the same position as you were at the time of granting it. But you will remember the suggestion was made, perhaps

by Mr. Covert in cross-examining Mr. Forsyth, that if the Board was satisfied that the railways needed the money they could make an order, and then make an investigation at that time, and then the matter would remain under decision until such time as the Board were in a position to come to a conclusion as to the effect of the rates. But I do suggest that if this legislation became law the increases have been of such recent growth that the Board would still be in a position to get very helpful information.

COMMISSIONER INNIS: You are asking the Board to go back and criticize its own decision.

MR SMITH: Well, it is hardly criticizing its own decision. They did not have the information; they did not have the statistics. Now we are asking them to go and get the statistics with a view to the new information which they have. They are an administrative body, and the doctrine of stare decisis does not apply to them, and they can always come to a new determination upon a different set of facts and circumstances.

THE CHAIRMAN: Your proposal is this, that hereafter whenever the railways come to the Board for an increase in freight rates the Board, instead of relying on somebody coming and opposing it, should be properly informed and properly equipped itself---

MR SMITH: That is right.

THE CHAIRMAN: ---to judge whether or not this application is reasonable and ought or ought not to be allowed.

MR SMITH: That is right, my lord.

THE CHAIRMAN: In addition they would hear anybody opposing it, of course.

MR SMITH: Oh, yes.

THE CHAIRMAN: Now, so far they seem to have said,

"Well, the railways asked us to do this, and those who opposed it could not show us any reason why we might not do it," and that is the end of it.

MR SMITH: "The railways need the money, and we have to give it to them."

THE CHAIRMAN: You want to change that.

MR SMITH: I want to change that, my lord.

THE CHAIRMAN: I understand that; but tell me this as a matter of information: We have had six or seven different applications since 1903 to the Board for increases in freight rates; were there more than that? -- well, about that.

MR SMITH: There were about six, anyway, to my recollection -- six or seven?

MR EVANS: Six.

MR SMITH: Six, I think.

THE CHAIRMAN: Now, in between those applications has the Board at any time intervened of its own motion and ordered increases or decreases of a general or a particular kind?

MR SMITH: I think once or twice.

MR EVANS: Twice.

MR SMITH: Twice, I think. That is when the cost of living came down, and we were in the depression of 1921 or 1922.

THE CHAIRMAN: What did they order then? A general decrease?

MR SMITH: A general reduction.

THE CHAIRMAN: All over the country

MR SMITH: Yes, my lord.

THE CHAIRMAN: No local adjustments such as you are looking for here?

MR SMITH: Well, I think the coal was still -- was

coal still in the same category? Yes. In the 1922 case I think there were some things like stone and other matters, but it was not a general exception.

THE CHAIRMAN: When they made these decreases were any complaints filed with them then?

MR SMITH: Well, that is the matter that I referred to, my lord.

THE CHAIRMAN: Did any contest arise?

MR SMITH: I referred to what I think it was Chief Commissioner Carvell said on that point. I referred to the 1922 reduction case at page 12 of my brief:

"It is arguable that in revising rates, the logical method to pursue is to redress antecedent necessary percentage increases by subsequent percentage decreases, thus minimizing the inequalities which the percentage increases had accentuated."

So I suggest there that it is implicit, in that passage is a recognition that the percentage increases do accentuate the inequalities.

THE CHAIRMAN: I know, but that is another question. Apparently he was making a pronouncement in some contentious matter before him, wasn't he?

MR SMITH: Yes -- the question of reduction.

THE CHAIRMAN: I wanted to know whether, when the Board had made any of these changes of its own motion---

MR SMITH: "As a matter of emergency action, however, revisions may be made on basic commodities in so far as is possible, consistently with other conditions now existing."

THE CHAIRMAN: Yes, but that is not the point. I want to know, when the Board on these one or two occasions -- two, I think -- of its own motion made some change in freight rates, did those actions by the Board lead to contention

before the Board? I mean, did the parties affected appear before the Board and say, "Stop, you should not have done this"? Did that occur?

MR EVANS: They held hearings all over the country in those two years.

THE CHAIRMAN: Before they did it?

MR EVANS: Before they did it.

(Recess)

MR SMITH: Perhaps, my lord, just directing myself for a moment to the question which you raised as to the Interstate Commerce Act, I find in section 1, sub-section 5---

THE CHAIRMAN: Of what?

MR SMITH: Of the Interstate Commerce Act. That is Part I, section 1.

THE CHAIRMAN: Section 1, sub-section 5?

MR SMITH: Sub-section 5, yes, my lord -- this provision:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Now, there does not seem to be any similar provision in the Railway Act. You will remember, I think, that your attention was drawn to this point, I think in the argument of my friend Mr. Frawley, as to just and reasonable rates, and the case of the Government of Alberta v. Canadian National Railways and Canadian Pacific Railway Company was referred to. That case is reported, my lord, in 1931 Supreme Court Reports 656. I am reading from page 658:

"The appellant clearly contends 'that it is not open to the Canadian National Railways under the Railway Act to charge the rates complained of with or without the consent of the Board.'

To decide that point, consideration of the scope and effect of the amendment of 1925 to the Railway Act is necessary. By that amendment, subsection 5 of section 325 of the Railway Act, 1919, was repealed and the new subsections 5 and 6 (reproduced at the beginning of this judgment) were added. It is common ground that the amendment was adopted to meet the points determined in the judgment of this Court on the Crow's Nest Pass rates (1925) Can. S.C.R. 155. As already mentioned, one of these points was that the rates were statutory and binding on the Board of Railway Commissioners.

The enactment of 1925 begins by conferring on the Board powers of the most sweeping character

to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require,

notwithstanding the provisions of section 3 of the Railway Act, that is: notwithstanding the over-riding provisions of any Special Act passed by the Parliament of Canada relating to the same subject-matter. The powers are not to be

limited or in any manner affected by the provisions of any Act of the Parliament of Canada, or by any agreement made or entered into pursuant thereto, whether general in application or special and relating only to any specific railway or railways."

Now, as I understand that judgment and the dicta of

Mr. Justice Rinfret, the power of the Board to fix, determine and enforce just and reasonable rates is unlimited.

THE CHAIRMAN: Is what?

MR SMITH: Unlimited. But, directing my attention to the question raised by your lordship, as to whether there is an obligation upon the railways to have just and reasonable rates, there apparently is no such statutory provision as contained in section 1, sub-section 5, of the Act.

THE CHAIRMAN: Is that because they are operating under rates fixed by the Board, which must be assumed to be fair and reasonable?

MR SMITH: Which are to be fair and reasonable.

THE CHAIRMAN: Well, so long as they operate under those rates---

MR SMITH: There may not therefore be the same obligation in Canada as the Interstate Commerce Commission has decided there is in the United States.

THE CHAIRMAN: It may be that the procedure is different in the United States.

MR SMITH: Well, there are some provisions, but I do submit that if there was a provision similar to that contained in section 1, sub-section 5, of the Interstate Commerce Act, that all charges must be just and reasonable, then there would be an obligation upon the Board similar to that stated to be on the Commission in the Ex Parte case to which I referred.

THE CHAIRMAN: To do what?

MR SMITH: I beg your pardon?

THE CHAIRMAN: To do what?

MR SMITH: "We may add that the petitioning carriers have the burden of initiating and maintaining rates

that comply with the Act."

THE CHAIRMAN: You see, they initiate the rates.

MR SMITH: The burden is on them, in good faith and with all possible promptness and in a spirit of co-operation to devise and suggest for the consideration of the shipping public the rates which in their judgment will correct maladjustments.

THE CHAIRMAN: Well, does that word "initiate" mean very much? Does it mean that in the United States rates are initiated by the railways?

MR SMITH: To a certain extent, yes, my lord.

THE CHAIRMAN: Whereas here we are told they are fixed---

MR SMITH: The railways do here initiate rates.

THE CHAIRMAN: I beg your pardon?

MR SMITH: The railways do initiate rates.

THE CHAIRMAN: I know, but always under the---

MR SMITH: Well, subject to the over-riding powers, the sweeping powers, referred to.

THE CHAIRMAN: I beg your pardon.

MR SMITH: Subject, of course, to the over-riding power given to the Board to fix, determine and enforce just and reasonable rates.

THE CHAIRMAN: Take the case I tried to give you a while ago. Suppose the Board has said the rate for a certain class of goods from point to point is \$1.00.

MR SMITH: Yes, my lord.

THE CHAIRMAN: And the railway introduces a rate of 90¢, nothing more than that, but the shipper says, "I can't afford to pay 90¢," would he then have a ground to go to the Board and say, "This 90¢ is unfair and unreasonable, and I can't afford to pay it"?

MR SMITH: That is to say, it would be lower than

the rate fixed by the Board.

THE CHAIRMAN: Yes; that is one point.

MR SMITH: Yes, my lord.

THE CHAIRMAN: But if the railway does fix a rate of 90¢, and some shipper in another locality thinks that rate is discriminatory in respect to him, he can go to the Board and complain.

MR SMITH: Yes, my lord.

THE CHAIRMAN: And on that ground of discrimination and preference he could get relief.

MR SMITH: Yes, my lord.

THE CHAIRMAN: I repeat, then, is mere relief on the ground that the railway has fixed a rate which is higher than the shipper says he can afford to pay or that he ought to be asked to pay, if that rate is lower than the ceiling rate fixed by the Board?

MR SMITH: I would not like to answer that question categorically, but as at present advised, I think not.

THE CHAIRMAN: Now, we were discussing just a few moments ago about the Board initiating changes in rates by itself.

MR SMITH: Yes, my lord.

THE CHAIRMAN: In the United States by the Commission, here by the Board.

MR SMITH: Yes, my lord.

THE CHAIRMAN: We were told, though, that so far as the Canadian Board is concerned that only happened twice, and that the changes were made only after---

MR SMITH: A general investigation.

THE CHAIRMAN: ---a Dominion-wide inquiry, investigation, and hearings, contentious hearings.

MR SMITH: Yes, there were.

THE CHAIRMAN: Judgments rendered and so on. Now,

do I still understand you to desire that the Board ought to have power simply of its own motion to order an increase or a decrease, without consulting anybody or hearing anybody?

MR SMITH: Well, I suggest that they should have that power, but I do not think they would exercise it without notice to all interested parties.

THE CHAIRMAN: Well, they can do that now.

MR SMITH: Yes, my lord.

THE CHAIRMAN: I mean, that is not adding anything. Right now they have, we were told a few times -- twice, I think -- taken upon themselves, having regard to the conditions prevalent in the country, to inquire whether or not there should not be a reduction in rates.

MR SMITH: Yes, my lord.

THE CHAIRMAN: But before making any reduction operative they had inquired and heard those concerned; isn't that right?

MR SMITH: Yes, that is quite right.

THE CHAIRMAN: Now, do you want to change that procedure?

MR SMITH: I want provision in the statute that the Board will have power to consider the question of the effect of a rate increase.

THE CHAIRMAN: Well, they certainly have that power now.

MR SMITH: They have that power now, but I want it specifically stated that in that adjustment they will consider the question of the disturbance of rate relationships. I think possibly they have that power now; they have that power, but at least I want it mandatory upon them that they do take that fact into consideration.

THE CHAIRMAN: When you are saying what power they

have, remember what they have said themselves about their opinion of their power.

(Page 22474 follows)

MR. SMITH: You see, in the 21% Case there was this requirement (page 68 of the Judgment):-

"The railway companies subject to the jurisdiction of the Board will be required to continue to furnish to the Board monthly statements of their operating revenues, operating expenses and operating income and should the Board, at any time, be of opinion that a greater amount of money is being paid to the railway companies than is actually necessary to enable them to maintain a reasonable degree of operating efficiency, the Board reserves the right, at any time, on notice, to re-adjust the rates to meet the conditions then existing."

THE CHAIRMAN: On notice?

MR. SMITH: On notice.

"On the other hand, should the amount of advance in rates authorized prove to be insufficient, the railways can always apply again. The Board will remain seized of these proceedings."

My lord, I don't think there is anything more I can usefully add - -

THE CHAIRMAN: The question is, what you want done. We are considering your amendments.

MR. SMITH: - - on this question of horizontal increases.

THE CHAIRMAN: Are you prepared to go on to propose sub-section (d)?

MR. SMITH: No, I don't want to speak to that at the present time.

THE CHAIRMAN: I see, all right.

MR. SMITH: That is another matter.

THE CHAIRMAN: You intend to come back to that?

MR. SMITH: I intend to come back to it.

THE CHAIRMAN: Where are you then?

MR. SMITH: I am at page 29 now. I have previously referred to the handicaps imposed upon the economy of Nova Scotia by geography, transportation and other policies in Canada. I repeat that because of the weak industrial and agricultural position of the province, increases in freight rates bear most heavily upon it. This is particularly true in the case of horizontal increases.

It was argued in the submission of the province at pages 41-42 (Vol. 72, p. 14603) that consideration should be given to the maintenance at a low level of freight rates on raw materials or other goods to be used in the processing or manufacture of products in Nova Scotia shipped from points outside the select territory, as defined in the Maritime Freight Rates Act. I relate this submission to my argument respecting horizontal increases.

THE CHAIRMAN: Wait a moment. You say:

".....consideration should be given to the maintenance at a low level of freight rates on raw materials.....".
What do you want us to do about that?

MR. SMITH: I am not asking you to do anything. That is a matter for the consideration of the Board. If the power is conferred on the Board to take into the question the effect of rates on the movement of traffic

and the effect of rates in disturbing rate relations; if the Board has that power now or by the amendment which I have sought, then I suggest that that is one of the matters which they should take into consideration in their determination of the question.

THE CHAIRMAN: I suppose you mean that they should be obliged -- is that it? -- to consider the maintenance of a low level of freight rates on raw materials or other goods to be used in the processing or manufacture of products in Nova Scotia. Those are materials brought into Nova Scotia?

MR. SMITH: That is right, my lord.

THE CHAIRMAN: Of course you would not expect legislation only for Nova Scotia?

MR. SMITH: No, my lord, I would not, but that is a consideration - -

THE CHAIRMAN: Then would you take the raw materials from one province going into another province and say that the object of the Board should be to bring them in as cheaply as possible?

MR. SMITH: I am trying to make the point - -

THE CHAIRMAN: I think, for instance, that in Alberta we were told that they want the freight rates to be so planned as to encourage industries at home?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Now, is your desire just the opposite to that?

MR. SMITH: My desire -- well, I will take the case, for instance, of the Sackville industries. Of course, that is not quite Nova Scotia; it is across the border.

THE CHAIRMAN: New Brunswick?

MR. SMITH: It is in New Brunswick, and one of the companies has a branch in Amherst. The evidence is that they import their pig iron from Ontario, from Algoma and Stelco, and they fabricate their stoves there and ship them all over Canada. In order to protect that industry or in order to maintain that industry rather, my submission is that the Board in its consideration of the effect which horizontal increases have on that particular industry or any industry in a like situation, that that be one of the factors considered by the Board.

THE CHAIRMAN: What are the raw materials that you have in mind there?

MR. SMITH: Pig iron.

THE CHAIRMAN: Where does it come from in the case of the Sackville plant?

MR. SMITH: It comes either from Algoma Steel or the Steel Company of Canada, either from the Sault or from Hamilton.

THE CHAIRMAN: The pig iron?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: You think that special consideration should be given to raw materials - -

MR. SMITH: It is just a consideration whether that matter should be taken into consideration by the Board in maintaining an industry which is of benefit to the welfare of the Dominion.

THE CHAIRMAN: Well, isn't that just about what the Board say they have no power to consider?

MR. SMITH: No, I don't think they go quite that far. I think they always have in mind - -

THE CHAIRMAN: In any case, if they have not the power, you say they should be given the power and the duty, is that it?

MR. SMITH: No, I think they have the power. I am not asking for a special amendment in that connection.

THE CHAIRMAN: What do you want us to do actually?

MR. SMITH: I am asking for the amendment as to the disturbance; my amendment, I think, covers that question, that that is a matter that they can take into consideration. I am not pressing it any further.

THE CHAIRMAN: Then you say your amendment would make it clear that they have that power?

MR. SMITH: Yes, that is quite right, the effect of rates as disturbing rate relations.

THE CHAIRMAN: We had before a case in which they said that they are not empowered to act as arbiters of industrial policy.

MR. SMITH: Yes, I know.

THE CHAIRMAN: "The railway may put in these rates with a view to increasing traffic, but such rates, I submit, the Board has no power to put in. It has been settled time and time again that rate regulating commissions have no right whatever to attempt to equalize geographic, climatic or economic conditions". I don't know, they seem to have limited themselves very considerably. However, that your amendment would make clear, that they have that power.

MR. SMITH: In my submission it would cover a case of that kind, and therefore I am not asking for any specific amendment to cover the particular case of these industries which I have mentioned.

THE CHAIRMAN: You think the amendments you are proposing do cover that?

MR. SMITH: I think so, my lord. That at least is my view.

COMMISSIONER ANGUS: Mr. Smith, is that suggestion almost the exact opposite of Mr. Frawley's suggestion that rates should encourage processing near the source of supply of raw materials; and you are asking that they should permit processing at a distance?

MR. SMITH: My submission is directed to the maintenance of an established industry, and that is one of the factors which are taken into consideration.

THE CHAIRMAN: Now then, are you distinguishing between the maintenance of an established industry and the establishment of an new industry?

MR. SMITH: Well, there is a point there, my lord. It was particularly directed to the maintenance of an established industry, and that is one of the - -

THE CHAIRMAN: I know, but you cannot legislate around things like that. Either you do one thing or the other.

MR. SMITH: I am not legislating in respect of this point at all, my lord. I am legislating in the question of disturbing rate relations. That is the amendment I am asking for and I think probably, in answer to your first question, it would only apply to the maintenance of an established industry rather than benefit a new industry.

THE CHAIRMAN: Established now?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Already established?

MR. SMITH: Yes.

THE CHAIRMAN: Would you mean that if Nova Scotia establishes new industries they are not to have this protection?

MR. SMITH: No, I don't think that would cover it because the effect of rates in disturbing rate relations, (I have tied that down) would only cover the case where you have an industry and you are bringing your raw material in; and if you raise freight rates so that it makes it difficult for that industry to live, then I suggest that the Board would have authority under the proposed amendment to endeavour or to offset as much as it could the disturbance.

THE CHAIRMAN: Would it have any duty there?

MR. SMITH: Yes, I think it would be a duty, because they have to take into consideration the effect of rate changes, of disturbing rate relations.

THE CHAIRMAN: I see, all right.

COMMISSIONER ANGUS: I think when I quoted Mr. Frawley just now, I said "encourage" when I should have said "not discourage".

MR. SMITH: Well, I didn't use the word "discourage". Now, the next matter is the question of Arbitraries, referred to in the argument of the Transportation Commission.

ARBITRARIES

The Province in its Submission, pp. 28-29, (Vol. 71)pp. 14590-14591) referred to the argument of the Transportation Commission of the Maritime Board of Trade with respect to the class rate structure between

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the Maritimes and other parts of Canada, being based on "arbitrariness" over Montreal. It was urged that "normal class" arbitrariness over the rates at Montreal which existed prior to April 8, 1948 between stations west of Montreal and the Maritimes be maintained, notwithstanding the general percentage increases which have taken place since April 7, 1948.

I will refer to this contention when presenting the argument of the Maritime Transportation Commission and feel it is unnecessary to discuss it at this time.

THE CHAIRMAN: You say you are going to present the argument later on?

MR. SMITH: Yes, my lord, I don't think I need - -

THE CHAIRMAN: Hadn't we better go on to something else then?

MR. SMITH: The next matter, my lord, is "Import and Export Rates", and here again I anticipate difficulties - -

THE CHAIRMAN: Pardon me, what meaning do you give to these words "import and export" -- Nova Scotia?

MR. SMITH: No, Canada.

THE CHAIRMAN: Yes, goods coming in from outside countries?

MR. SMITH: Yes.

THE CHAIRMAN: And going out to outside countries?

MR. SMITH: To the ports.

THE CHAIRMAN: All right. What submission are you making?

MR. SMITH: I stated it very broadly in my

(IMPORT AND EXPORT RATES)

submission in the Nova Scotia Brief, that import and export rates from and to Nova Scotia ports should be maintained at such a level as to cause an adequate volume of import and export trade to flow through Nova Scotia ports (Submission of Nova Scotia, p. 40; Transcript, Vol. 71, p. 14602.) I stated that is rather broad, but that is at least - -

THE CHAIRMAN: Import rates affecting Nova Scotia, import rates from where?

MR. SMITH: Through the ports.

THE CHAIRMAN: By sea, you mean?

MR. SMITH: By sea.

THE CHAIRMAN: Who fixes those rates?

MR. SMITH: Not the sea rates, but the rates on goods which are imported, freight rates on imported and exported goods passing through the ports.

THE CHAIRMAN: Oh, the freight rates on goods, say, coming into Halifax and then going on to - -

MR. SMITH: Toronto, we will say.

THE CHAIRMAN: To Toronto.

MR. SMITH: Freight rates from Toronto to Halifax.

THE CHAIRMAN: These rates from Halifax to Toronto are part of the through rates added to the sea rate, and those are the rates you want to be kept low?

MR. SMITH: The railway rates. Now, in the recommendations in - -

THE CHAIRMAN: Conversely you want them also low enough on the way out to bring the traffic out to Halifax?

MR. SMITH: Through the ports.

THE CHAIRMAN: Or to St. John's?

MR. SMITH: Yes, my lord. I am speaking of Halifax now.

Now, in the Recommendations in Book II of the Report of the Royal Commission on Dominion-Provincial Relations (the Sirois Report), it was said, at p. 259, that the fullest possible utilization of the ports of the Maritime Provinces, consistent with the general welfare of the Canadian economy, must remain in the future a prime objective of Canadian policy.

Various statutory declarations of policy confirm that finding. It is only necessary to refer to the following:

Statutes of Canada, 1903, 3 Ed. VII, C.71, sec. 42 and 43, ratifying the Agreement with the Grand Trunk Pacific Railway Company, in which it was provided that the aid was granted by the Government for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels and Canadian ocean ports.

THE CHAIRMAN: Was that financial aid given by the Government?

MR. SMITH: Yes, that was the construction of the National Transcontinental Railway.

THE CHAIRMAN: Yes, the Agreement they made for its construction?

MR. SMITH: Yes, and then there is a similar provision in the Acts of 1911 and 1914. In Statutes of Canada, 1911, C. 6, sec. 13, respecting Aid Towards the Construction of the Canadian Northern Ontario Railway; and Statutes of Canada, 1914, C. 20, sec. 6(a) respecting

the Canadian Northern Railway System.

In both of these Statutes there was a declaration that the aid provided for was granted by the Government for the express purpose of encouraging the transportation of goods through Canadian channels and the respective companies undertook in good faith to use their utmost endeavours to fulfil that condition, namely to further the development of trade through Canadian ports and Canadian channels.

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(Page 22484 follows)

THE CHAIRMAN: That applies to Pacific ports ?

MR. SMITH: To both coasts. In the Canadian National-Canadian Pacific Act there is some similar requirement on the Canadian National Railways to route goods through Canadian ports when not otherwise designated by the shipper.

THE CHAIRMAN: We have that as National policy in the conduct of those railways we have in Canada. But what do you want to have done in the way of legislation?

MR. SMITH: As has been mentioned in the submission of the Transportation Commission of the Maritime Board of Trade and in the evidence of Mr. Matheson, Canadian export and import freight rates related to rates to and from the United States North Atlantic ports have increased from time to time to the extent considered necessary to reflect increases authorized in the United States and to maintain differential relations on parities with the United States ports.

THE CHAIRMAN: You are referring now to traffic on railways on both sides of the border?

MR. SMITH: Yes, my lord.

Mr. Matheson, in his brief, suggested that Maritime port rates should be adjusted to reflect, during the summer months, the period April to November, when the St. Lawrence was open, the relationships which existed with the Port of Montreal prior to March 28, 1938. He pointed out that there had been, by reason of the rate increases, a disturbance of the relationship between the ports of Montreal and the Atlantic ports, greatly to the detriment of the Atlantic ports. I refer to submission of the Transportation Commission, pages 94 to 97; volume 19, page 3679 et seq and volume 20, pages 3683 - 3685.

The Maritime Transportation Commission is submitting an amendment to Section 325 of The Railway Act for this purpose, and I will speak about that amendment when presenting their argument.

THE CHAIRMAN: Have you the amendment right here?

MR. SMITH: I will deal with it when I present Mr. Matheson's argument.

THE CHAIRMAN: Very well, I thought you were doing that now.

MR. SMITH: No.

I now come to the Maritime Freight Rates Act.
The Maritime Freight Rates Act.

The Province, in its Submission, pp. 24-29, (Vol. 71, pp. 14585-14590) has referred to a partial breakdown of the benefits conferred by The Maritime Freight Rates Act. This arises from the fact that in Central Canada there have been a large number of reductions of competitive rates put into effect to meet water and truck competition. It was urged in the Submission that by reason of these circumstances, the 20% differential in freight rates granted to the Maritime Provinces under The Maritime Freight Rates Act had been prejudicially affected.

It was further pointed out in the Submission that under a decision of the Supreme Court of Canada ((1937) S.C.R. 271) the Board of Transport Commissioners has no authority to adjust or vary rates in the select territory by allowing a reduction therein proportionate to the reduction effected by the competitive tariff in the outside territory and that its authority was limited to the cancellation of the rates.

The cancellation of a competitive rate established outside the select territory is obviously of no benefit to shippers in the select territory.

It is therefore suggested that in order to maintain the statutory advantages, i.e. to reduce the rates to preserve the

differential established by the Act, an amendment of Section 8 is necessary. The Transportation Commission of The Maritime Board of Trade have submitted an amendment for this purpose and I will discuss it when presenting their submission. In the meantime, I merely say that I advocate its adoption.

THE CHAIRMAN: All this is statutory?

MR. SMITH: Yes.

THE CHAIRMAN: Do you want the statute amended in any way?

MR. SMITH: Mr. Matheson is presenting an amendment which I will speak to when I am presenting that, as to the power of the Board in such case.

THE CHAIRMAN: Very well.

MR. SMITH: I now come to the question of uniformity of accounting.

Uniformity of Accounting

Paragraph 2, sub-paragraph (d) of P.C. 6033

directs the Commission to:

"Review the present day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting (or otherwise), measures conducive to uniformity in such matters, and upon other related problems such as depreciation accounting, the segregation of assets, revenue and other incomes, etc., as between railway and non-railway items."

Accounting Methods and Statistical Procedure.

The necessity of a uniform system of accounts for railways is generally recognized as indispensable to rate regulation. Indeed, it would appear that both the Canadian National Railways and the Canadian Pacific Railway are agreed in principle on uniform accounting.

(Canadian National Railways Submission, p. 80;
Canadian Pacific Railway Submission, p. 144;
Statement of Mr. Evans, Vol. 103, p. 19069.)

Counsel for the Provinces who have preceded me are in agreement.

In the Judgment in the 21% Case (pamphlet copy p. 23) it was pointed out that the making of accurate comparisons between the Canadian Pacific Railway and the Canadian National Railways was difficult because of the lack of a uniform system of accounting and practices for Canadian railways, and the view was expressed that this was a subject which should have further consideration.

In the Judgment in the 20% Case of September 20, 1949 (pamphlet copy p.13), the Board stated that there was a fundamental difficulty experienced by it in that the Railway Act does not in its present form give the Board authority to control the accounting procedure of the Railways.

MR. CARSON: That is the 8% Case.

MR. SMITH: The 20% Case on September 20, 1949.

THE CHAIRMAN: You adopt the Saskatchewan proposal or the Manitoba proposal?

MR. SMITH: Yes.

I am prepared to adopt either the amendment proposed by the Province of Saskatchewan or the one proposed by the Province of Manitoba in this connection. In my submission, there is no necessity of having an amendment to the Railway Act with respect to statistical procedure.

Depreciation Accounting.

There is no uniformity as between the Canadian Pacific Railway Company and the Canadian National Railways in respect of depreciation charges on any class of assets. Witnesses for the two Railways advocated the methods which have been respectively followed by the Companies.

The position taken by the Canadian National Railways is that the Board should direct uniformity in depreciation practices. On the other hand, the Canadian Pacific Railway

Company contended before this Commission, and will contend before the Board, that there is no need for uniformity. Both Railways are, therefore, in agreement to the extent that they should be free to present their submissions to the Board in this regard and that they should be bound by such determination as the Board makes of the problem. The suggestion, therefore, is that the Commission should so recommend ..

The amendments proposed by Counsel for Saskatchewan and Manitoba, to which I have referred, provide that the Board shall adopt the method of prescribing depreciation, the class of property to which depreciation shall apply and the rates which shall be charged. Either one of these amendments would, in my submission, be acceptable.

THE CHAIRMAN: To leave it to the Board whether it shall be straight-line or otherwise?

MR. SMITH: Yes.

I submit that there is a preponderance of opinion in favour of the adoption of the straight-line method of depreciation and that it is the simplest and the one most generally used by railways, but I am content to have that question determined by the Board.

Segregation of Assets.

In the Province's Submission (pp. 43 and 44), it was suggested that -

- (a) rules for the segregation of accounts should be laid down by the Board clearly setting out what constitutes rail as opposed to non-rail enterprises, and
- (b) rules for the allocation and apportionment of charges common to both rail and non-rail enterprises should be prescribed by the Board.

THE CHAIRMAN: When you refer to the Province's Submission, pp. 43 and 44, you mean their Submission to the

government?

MR. SMITH: To this Commission.

THE CHAIRMAN: To this Commission?

MR. SMITH: Yes.

THE CHAIRMAN: What Provinces ?

MR. SMITH: The Province of Nova Scotia.

THE CHAIRMAN: Oh, I see. I thought the word was plural.

MR. SMITH: No, it is singular.

THE CHAIRMAN: Yes, I see.

MR. SMITH: I refer to the following passage from the Judgment in the 20% Case of September 20, 1949 (at p. 13 of the pamphlet copy):

"Counsel for the respondents have also maintained that if Other Income is not to be considered in fixing a level of freight rates that this Board exercise active control over the establishment of what is rail income and what is Other Income. The foregoing contention points directly to a fundamental difficulty experienced by the Board--that the Railway Act does not, in its present form, give the Board authority to control the accounting procedure of the railways in the manner advocated by counsel."

I do suggest that in the United States they do segregate as between rail and non-rail in their accounts.

THE CHAIRMAN: Is that the real difficulty?

MR. SMITH: I beg your pardon?

THE CHAIRMAN: The Board says that the Railway Act does not give the Board authority to control the accounting procedure of the railways. But does the Act prevent the Board from saying what is rail and what is non-rail?

MR. SMITH: No, it does not.

THE CHAIRMAN: Then if the Board can say what is rail

and what is non-rail, there must be a segregation.

MR. SMITH: Yes. But I do suggest that I am in agreement with the proposal of the Provinces in this regard. I submit that it is proper accounting practice to have such a segregation. Merely in passing I refer your lordship to what is said in Mr. Locklin's book, that a second essential of a system of railway accounts is complete separation of carrier and non-carrier business. I think that is at page 561. There is a discussion there. I think that is to be found at about page 561. There is a similar statement in Bigham's book on Railway Transportation:

"A fourth requisite is a complete segregation of the accounts dealing with carrier and non-carrier business."

MR. CARSON: What page is that?

MR. SMITH: Page 222.

(Page 22496 follows).

THE CHAIRMAN: What book is that?

MR. SMITH: Bigham. It has been quoted quite often here. I suggest that if the proposed amendment respecting uniform accounting is enacted, it is submitted that the Board will then have power which it should exercise to make and enforce regulations requisite for the segregation of assets, revenues and other incomes as between rail and non-rail items.

APPEALS

On behalf of the Province of Nova Scotia, I submit that the provisions of Section 52 should remain as at present and that consequently there should be no change with relation to the powers of the Governor in Council to vary or rescind orders, decisions, rules or regulations of the Board or with respect to appeals from the Board to the Supreme Court of Canada.

It is stated in the submission of the Canadian Pacific Railway Company (Part I, pp. 147-148) that since the inception of the Board, there have been 51 appeals to the Governor in Council, that only three of these were allowed, 14 were referred back to the Board for further consideration and the balance were either dismissed, withdrawn or abandoned.

Mr. Covert informed the Commission that according to his information, there have been 54 appeals, of which 27 were dismissed, 3 allowed, 12 referred back to the Board, 2 withdrawn, 5 abandoned and 5 not reported.

THE CHAIRMAN: It is agreed then that there were only three allowed.

MR. SMITH: That is right.

In Paragraphs 77 and 78 of the Outline Submissions of the Canadian Pacific Railway Company, which

are set out on page 142 of Part I of its Submission, it is contended that the Board of Transport Commissioners must be able to render its decisions free from political influences, that anything which destroys confidence in the stature of the Board is a disservice to Canada and that appeals to political tribunals have a stultifying effect upon the Board and upon the impartial and judicial exercise of its powers.

In Paragraph 79 of the Outline Submissions, which is quoted on the same page, the Company submits that appeals from the Board to the Governor in Council should therefore be abolished and that a recommendation should be made by the Commission to amend the Railway Act by deleting Section 52(1).

In view of the record of the disposition of the appeals and of the principles which have been laid down by the Governor in Council for the exercise of his power under Section 52, it is submitted that the contentions of the Canadian Pacific Railway Company are without substance.

THE CHAIRMAN: It is a fact there is no appeal in the United States from decisions of the Interstate Commerce Commission?

MR. SMITH: That is not quite correct. There are appeals, my lord.

THE CHAIRMAN: Even on questions of fact?

MR. SMITH: I may as well deal with that question now.

THE CHAIRMAN: According to what we were told before the only appeals are on law.

MR. SMITH: That question is discussed in Locklin at Pages 288 to 296.

MR. CARSON: Do you say there is an appeal on

questions of fact?

MR. SMITH: I am going to deal with that. At pages 288 to 296 of Locklin there is a division for eight pages in respect of the question of judicial review of orders of the Interstate Commerce Commission. The grounds for judicial interference would appear to be -- this is my synopsis of what is stated by Professor Locklin -- (1) that the provisions of the Act are unconstitutional; (2) that the Commission exceeded its statutory authority; (3) that there has been a violation of specific constitutional guarantees by the action of the Commission.

THE CHAIRMAN: Those are all legal so far.

MR. SMITH: (4) that the order is based on a misconstruction of misinterpretation of the statute.

THE CHAIRMAN: That is legal too.

MR. SMITH: (5) On a mistake of law; (6) that the order is made without evidence or contrary to evidence.

THE CHAIRMAN: Without evidence.

MR. SMITH: Or contrary to evidence. I suppose we would say weight of evidence. Then I say that apparently an order of the Commission cannot stand if supported by a mere scintilla of proof but there must be substantial evidence to support it. That is my synopsis of the views which are expressed in these pages by Professor Locklin. He discusses the various jurisprudence in relation to the question of judicial review.

THE CHAIRMAN: What was that last ground, that the decision was made without evidence or against the evidence?

MR. SMITH: One of the cases almost lays down the same principles as are laid down by our courts as to appeal from a judgment of a single judge, or in the

case of a verdict by a jury, that the verdict was such as reasonable men could not find.

THE CHAIRMAN: Such as twelve honest men could not possibly arrive at.

MR. SMITH: That is right. I say that the order of the Commission cannot stand if supported by a mere scintilla of proof but there must be substantial evidence to support it.

THE CHAIRMAN: That appeal is to the courts. There is no appeal to any such thing as the governor in council.

MR. SMITH: Not to the cabinet.

THE CHAIRMAN: The appeal is to the court.

MR. SMITH: Over there the Cabinet is only an advisory body.

THE CHAIRMAN: The one ground which is nearest to an appeal on the facts is the last one. Will you read it again, please?

MR. SMITH: That the order is made without evidence or contrary to evidence. That is the way it is stated. Then there is a long discussion as to the judgments, and that is merely the interpretation put upon it by Professor Locklin. I think in order to examine into a judicial review of the orders you would have to look --

THE CHAIRMAN: In that case you would simply consider what evidence there was before the Commission and you would say that on that evidence you had no power to find as you did find. Then do they make a finding or send it back to the Commission?

MR. SMITH: I think they would send it back to the Commission. I have not Professor Locklin's book here.

THE CHAIRMAN: If the appeal we have now to the Privy Council were to be abolished and an appeal allowed to the Supreme Court of Canada on the same grounds as you have just read there, would that be satisfactory to you?

MR. SMITH: No, my lord. That matter was discussed, and I am advocating that the appeal to the Governor in Council be retained. I submit that the Governor in Council has enunciated the principles which he recognizes as governing the exercise of this right. I refer to the orders in council in which these principles have been laid down at page 41.

THE CHAIRMAN: What is the order in council?

MR. SMITH: It is given here at the bottom of page 41 of my argument. It has been laid down on various occasions, it is not one solitary order. This is an order in council which was made in 1933, and it is reported in 2 D.L.R., page 209 at page 212.

MR. CARSON: Have you the P.C. number?

MR. SMITH: No, I have not. The title in the Dominion Law Reports is "Re Railway Freights in Canada."

The Governor in Council has in various orders incouncil enunciated the principles which have been recognized as governing the exercise of his jurisdiction on applications made to him under Section 52. For example, in order in council made in 1933 and reported under the title "Re Railway Freights in Canada" 40 C.R.C. 97; (1933) 2 D.L.R. 209, at pp. 100 and 101 in 40 C.R.C. and p. 211 in (1933) 2 D.L.R., it is said:

"The Committee deem it proper, in connection with the said Appeals, to call attention to the principles that have in the past been recognized as governing the exercise of the jurisdiction of the Governor in Council on

applications made to him under the provisions of Sec. 52 of the Railway Act. As has been pointed out in previous Orders in Council, 'the intent of the legislation is to invest His Excellency in Council with judicial powers by which he may in his discretion aid in securing and enforcing the provisions of the Railway Act, having due regard to the method of railway rate regulation by an independent commission which was the outstanding innovation in the Railway Act of 1903 and which has been preserved throughout succeeding revisions of the Act to the present time.' (Order in Council P.C.2166, dated the 24th day of October, 1923.)

.....

Further, that 'in appeals to the Governor in Council from the Board of Railway Commissioners a practice has grown up not to interfere with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle, or that it has been otherwise subject to error. Where the matters at issue are questions of fact depending for their solution upon a mass of conflicting expert testimony, or are otherwise such as the Board is peculiarly fitted to determine, it has been customary, except as aforesaid, not to interfere with the findings of the Board.' (Order in Council P.C. 1170, dated the 17th day of June, 1927.)"

The record as to the disposition of appeals and the principles laid down by the Governor in Council completely refute, I submit, the contention of the Canadian Pacific Railway that the Governor in Council's

decision must be given of necessity upon political considerations rather than upon the merits and upon the evidence. There is no evidence that any decisions have been given otherwise than upon the merits and upon the evidence.

THE CHAIRMAN: According to what you have told us three appeals have been allowed since 1903.

MR. SMITH: That is right.

THE CHAIRMAN: And the government in considering these appeals considers itself to be acting in a judicial capacity.

MR. SMITH: That is right.

THE CHAIRMAN: And in enforcing the provisions of the Railway Act what they do must be found justified by the Act itself.

MR. SMITH: That is right.

THE CHAIRMAN: They will not interfere unless they find that the Board has proceeded on some wrong principle. That is what a court of appeal would do?

MR. SMITH: Yes.

THE CHAIRMAN: Or that it has been otherwise subject to error?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: I presume that would be a legal error?

MR. SMITH: Not necessarily a legal error; I suppose an error in principle.

THE CHAIRMAN: Or are otherwise such as the Board is perculiarly fitted to determine. Having regard to the grounds which the government lays down to govern its proceedings would you not be better off before a court of justice?

MR. SMITH: No, I do not think so. I think that

it has been very satisfactory. The Canadian Pacific Railway did not raise any objection until there was a change in 1948. There was some modification -- and we claim rightly -- in the judgment in the 21% case, and the committee after expressing some views sent the matter back for disposition by the Board in the light of principles which they laid down.

THE CHAIRMAN: We will adjourn now.

---The Commission adjourned at 1.05 p.m. to resume at 2.45 p.m.

Ottawa, Ontario.
Friday, May 12, 1950.

A F T E R N O O N S E S S I O N

ARGUMENT BY MR. SMITH (Cont'd.)

MR. SMITH: I think I was at the bottom of page 42, my lord, starting at the last paragraph:

It is also submitted that it is neither necessary nor expedient to amend subsection (2) of Section 52 by conferring upon a judge of the Supreme Court power to determine whether a question arising out of a decision of the Board is one of law and whether leave should be granted.

THE CHAIRMAN: Pardon me a moment. You say---

MR. SMITH: 52 of the Railway Act.

THE CHAIRMAN: What is it you say?

MR. SMITH: As at present the Board has power to determine whether a question is one of law.

THE CHAIRMAN: That is why the Act requires the Chairman to be a lawyer.

MR. SMITH: Yes, my lord.

THE CHAIRMAN: And the Vice-Chairman.

MR. SMITH: Yes, my lord. It is suggested that there be a change there, that the power should be taken away from the Board and be given to the Supreme Court.

THE CHAIRMAN: You suggest that?

MR. SMITH: No; it is suggested by the Canadian Pacific Railway Company.

THE CHAIRMAN: And you do not think there ought to be?

MR. SMITH: No.

The Board has that power at the present time and has always exercised it in a judicial manner.

As is mentioned in Mr. Coyne's book on the Railway Law of Canada, at p. 57, the suggestion was made in the Parliamentary Committee that the question whether or not there should be appeal as to both law and jurisdiction should be left to the Supreme Court but the considerations prevailed that the Chief Commissioner and Assistant Chief Commissioner must be men of long legal experience; that the Board has special knowledge of the matters entrusted to it and that it had in practice given leave in every reasonable case in which it had been applied for. It has always been the practice of the Board to grant leave to appeal upon any proper question. New York Central v. Valleyfield 52 C.R.T.C. 109. If it is fairly arguable that the decision of the Board is wrong on the question which the applicant desires to raise, the Board has invariably given leave to appeal. (Coyne, p. 99.)

So I submit in the circumstances it is not essential to have a change.

RATE BASE, RATE OF RETURN AND CANADIAN
PACIFIC RAILWAY AS THE ONLY YARDSTICK.

Now, my lord, I come to the rather important question of rate base and rate of return and Canadian Pacific as the only yardstick, and I propose to deal with these matters together rather than separately, as in my submission they can be more conveniently discussed in that manner.

Counsel for the Commission has invited an expression of views on the subject of rate base and rate of return and Canadian Pacific Railway as the only yardstick.

In my respectful submission, these three matters can be more conveniently discussed together, rather than separately.

The application in the 30% Case was based on the financial requirements of the Canadian Pacific Railway Company and the Canadian National Railways for fixed charges, dividends and additions and betterments to railway property (net after retirements).

THE CHAIRMAN: Are you reading from page 44?

MR. SMITH: Yes, my lord, the third paragraph. (Pamphlet copy of 21% Judgment, p. 24.)

The Board decided with respect to the last mentioned items that what the Railways were in effect asking for was an allowance by way of surplus over and above their requirements for fixed charges and dividends. That is by the term additions and betterments to railway property (net after retirements). (Pamphlet copy of 21% Judgment, p. 26.)

THE CHAIRMAN: Pardon me a moment before you go any further. Is it possible, looking at the Judgment, what is ordered to be done, to show to what extent they considered the financial requirements of the Canadian National Railways?

MR. SMITH: No. I think what they did decide was, they decided at page 36 that they took the requirements of the Canadian Pacific Railway as the guide or measure, after referring to the Canadian National.

THE CHAIRMAN: They said something about the Canadian National also.

MR. SMITH: Yes.

THE CHAIRMAN: The point is, is there anything to show just the result?

MR. SMITH: Well, I was referring to page 36 of the Judgment.

THE CHAIRMAN: "Some regard must, I consider, be had to the needs of all the railways." Is that where it comes in?

MR. SMITH: Yes.

"But, as there can only be one rate for all railways,"---

THE CHAIRMAN: No, it is the paragraph before that.

MR. SMITH: "I cannot accept the contention of counsel for the respondents, that the requirements of Canadian National Railway should be entirely disregarded."

THE CHAIRMAN: Who was arguing that?

MR. SMITH: Mr. MacPherson, I think, made the argument on behalf of the provinces.

THE CHAIRMAN: "...that the requirements of Canadian National Railways should be entirely disregarded."

MR. SMITH: Well, it is here stated at page 35, my lord:

"Mr. MacPherson, Counsel for the Province of Saskatchewan, as did Counsel for the other Respondent provinces, strongly urged that on the issue of need the Canadian Pacific Railway Company should be taken as the only criterion. And that the requirements of the Canadian National Railways should be entirely disregarded in the establishment of a just and reasonable rate structure in Canada."

THE CHAIRMAN: Now, what did the Board do about that?

MR. SMITH: "Some regard must, I consider, be had to the needs of all the railways. But, as there can only be one rate for all railways, we should, I think, endeavour to arrive at a just and reasonable mean between the railways in fixing the rates. Upon consideration of

all that has been placed before us I am of the view that this can best be accomplished by taking the requirements of the Canadian Pacific Railway Company as the guide or measure,..."

THE CHAIRMAN: Did the provinces ask for anything contrary to that?

MR. SMITH: No. I think it is correctly stated that Mr. MacPherson made that argument.

In the 21% Case, in accordance with previous decisions, the requirements of the Canadian Pacific Railway were taken as the guide or measure in the establishment of what the Board considered to be just and reasonable freight rates to be paid by the users of the Railways. (Pamphlet copy of Judgment, p. 36.) These requirements are shown in the note on p. 66 of the Judgment as follows:

| | |
|-------------------------|-------------------|
| Dividends..... | \$21,310,000 |
| Fixed Charges..... | 15,787,174 |
| Allowance for Surplus.. | <u>15,235,000</u> |
| making a total of..... | \$52,332,174. |

THE CHAIRMAN: Was that the total result? There was nothing else?

MR. SMITH: Those are the requirements on which the amount, the deficiency found, was based.

In the application in the 20% Case, the member Companies of the applicant Association other than the Canadian Pacific Railway Company stated that they were content that their financial needs should be determined in relation to the financial needs of the Canadian Pacific in accordance with the principle laid down by the Board in the 30% Judgment. (Pamphlet copy of 20% Judgment of September 20, 1949, p. 9.)

In the 20% Case, the Canadian Pacific Railway Company endeavoured to show that a rate base had been established upon which a rate of return should be allowed. The Board, however, found that a rate base had not been established. (Pamphlet copy of Judgment of September 20, 1949, pp. 14-15.)

THE CHAIRMAN: Is that the same case you have been reading from?

MR. SMITH: No; that was the 21% Judgment. This is the 20 % Judgment of September 20, 1949, pp. 14-15.

THE CHAIRMAN: Have you got that here?

MR. SMITH: Yes. Under (b) on page 14:

"Counsel for the Canadian Pacific Railway endeavoured to show that a rate base had been established as a result of proper deductions from Exhibit 49-49 and the evidence in its support. The respondents refused to consider it open to the applicants on the hearing of this application to found their application on a rate of return on a rate base."

THE CHAIRMAN: I do not see that.

MR. SMITH: On page 14, my lord, under "Rate Base and Rate of Return".

THE CHAIRMAN: Oh, I thought you were referring to the bottom. All right, I have it.

MR. SMITH: " The applicants did not when such objection was made by the respondents, apply to amend their application so that there would be before the Board as an alternative to the dollar requirements of the Canadian Pacific Railway --- "

THE CHAIRMAN: The applicants did not apply to amend?

MR. SMITH: No, did not apply for a full discussion of a fair rate of return on the rate base.

However, in view of the importance attached to the evidence and argument respecting rate base by counsel for the applicants I think it proper to make this brief comment." And then on page 15, the third sentence:

"However I do not believe that such considerations justify me in determining without further evidence and investigation that the investments have been prudently made, and that the revenues have been sufficiently accounted for. Notwithstanding, therefore, the very able and learned arguments advanced by counsel for the Canadian Pacific Railway and notwithstanding the evidence of the learned experts, I accept the arguments advanced for the Province of Saskatchewan and the Maritime Transportation Commission that much more evidence than that adduced will be necessary to justify this Board in deciding that from this exhibit and the evidence in its support a rate base had been established for the purposes of dealing with this application."

The Board, in its review of the 21% Judgment, pursuant to Order-in-Council P.C. 4678, revised and adjusted the restatement at p. 66 of the pamphlet copy of the 20% Judgment (see pamphlet copy of Judgment in the 20% Case dated September 20, 1949, p. 7) and found a lower total revenue deficiency than was found in the earlier Judgment. That appears in the blue-covered book at page 7. You will see, my lord, at page 7 there is a restatement.

THE CHAIRMAN: A restatement of what? What is the short name of this Judgment? What do you call this?

MR. SMITH: Mr. Frawley calls it the mistake Judgment.

THE CHAIRMAN: You have the 20% and you have the 8%; what is this?

MR. SMITH: This is the 16% Judgment.

THE CHAIRMAN: Now, what do you say about page 7, Mr. Smith?

MR. SMITH: Well, on page 7 of the blue Judgment, the one of September 20, 1949, there is a restatement.

THE CHAIRMAN: What part of it do you refer to?

MR. SMITH: There is a restatement of the requirements, my lord, a restatement based on the requirements as found in that Judgment. I do not think it has very much relevance. I just wanted---

THE CHAIRMAN: Are you sure it is this one?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: That is the 8%?

MR. SMITH: Well, it is two things.

MR. COVERT: Yes, it is the 8%.

MR. SMITH: It is the 8% Judgment, but it was a review of the 21% Judgment, and then it also deals with the 20% application.

THE CHAIRMAN: Well, there I find the first figures set out under "Depreciation". Is that the page you are talking about?

MR. SMITH: No, it is under "Income Tax", my lord. If you look at page 66 of the earlier Judgment you will see that there is a statement there, and this is the restatement on page 7. You can compare them, my lord.

THE CHAIRMAN: Page 66 of what?

MR. SMITH: Page 66 of the 21% Judgment. There is a statement there, and you will notice a note at the bottom.

THE CHAIRMAN: What is the difference between the two statements?

MR. SMITH: Well, the chief differences are in three items. There are only three items that are affected. There is a difference by reason of, first, apportionment of fixed charges. If you will look now at page 7 of the

blue Judgment you will observe the second item is, "Fixed Charges (as allocated and apportioned)", which is reduced to \$12,802,702.

THE CHAIRMAN: Reduced from what?

MR. SMITH: From the amount which was in the original.

THE CHAIRMAN: That is \$15,787,174?

MR. SMITH: Yes, my lord. Then the next item is that there were adjustments in respect of depreciation. In the original judgment there was a total allowance of \$4 million of depreciation.

THE CHAIRMAN: Where is that?

MR. SMITH: On page 66, my lord:

"Overstatement of Depreciation - Rolling Stock...
\$2,000,000

Overstatement of Depreciation - Road Property...
\$2,000,000" -

Making the total amount of \$4,000,000.

THE CHAIRMAN: And what happens on page 7 of the other judgment?

MR. SMITH: On page 7 of the other judgment, the overstatements are amended. The overstatement of depreciation - Rolling Stock" becomes, instead of \$2,000,000, \$5,279,880; and the "Overstatement of Depreciation - Road Property" in the 21st Judgment of \$2,000,000 becomes \$593,103.

THE CHAIRMAN: So there is an increase then from about \$4,000,000 to about \$5½ million.

MR. SMITH: Yes, \$5.8 million.

THE CHAIRMAN: Five and three quarter million.

MR. SMITH: That is right; and the only other change was in the treatment of income tax.

THE CHAIRMAN: What was done there?

MR. SMITH: Well, page 7 of the blue Judgment says that Mr. Egan, who was a Chartered Accountant called by ---

THE CHAIRMAN: No, but just the figure.

MR. SMITH: Oh, the figure?

THE CHAIRMAN: Yes.

MR. SMITH: Well, it is a little different, my lord - it is a little hard to follow because the two figures, \$22 million and \$34 million are not the same figures.

THE CHAIRMAN: Pardon me a moment. I find on the first Judgment, "Add Income Tax for 1947 as above, \$12,372,935." Is that the figure?

MR. SMITH: Yes, my lord. There was a difference between the income.

"(It) was made after deducting an amount for income tax which in its calculation had failed to reflect the proper adjustments for the overstatement of depreciation and deferred maintenance as appears in the Board's decision in the 21 per cent case. This requires adjustment, therefore the net railway operating income of the Canadian Pacific Railway to take care of the proper adjustment for income tax and the adjustments already indicated will be as follows:" So there were really three items that were affected.

THE CHAIRMAN: I know, but I am asking how was the income tax figure affected? It was reduced from \$12,372,000 to \$7,731,000; is that right?

MR. SMITH: That is right, \$7,731,320

THE CHAIRMAN: Now, what is your purpose in pointing out those figures?

MR. SMITH: I am just giving you the history, my lord. I did not intend to go in to details; I was just

giving you the history of it.

THE CHAIRMAN: These changes were made when the matter - or were they? Or is this an original application?

MR. SMITH: I beg your pardon?

THE CHAIRMAN: This is the review.

MR. SMITH: Yes, my lord.

THE CHAIRMAN: When the case went back to the Board they made these changes.

MR. SMITH: Yes, my lord.

THE CHAIRMAN: By reason of the directions they received from the Government?

MR. SMITH: That is right, my lord.

In the Judgment of the Board dated March 1, 1950, the requirements of the Canadian Pacific Railway for 1949 were based on the revised formula of the Board's Judgment of September 20, 1949.

The Canadian Pacific Railway has proposed to the Commission that there be the following amendment made to Section 325 of the Railway Act:

"Rates shall not be deemed to be just and reasonable unless, taken as a whole, they are sufficient to provide a fair return upon the investment in the railway property of Canadian Pacific Railway Company and the Board may from time to time determine the investment in railway property upon which the return is to be calculated and the rate of such return."

--Transcript, Vol. 110, pp. 20267-20268.

The Company has, therefore, now taken the position that freight rates must be fixed upon the basis of a fair return on what it asserts is a fair rate base, namely its investment in railway property. Its financial requirements

are, under the proposed amendment, no longer to be the guide and measure.

It is suggested that in order to weigh the proposal, it might be helpful to the Commission if I make some reference to the fair-return-on-fair-value standard for rate-making purposes. This concept had its origin in the United States.

"Fair return is the amount that a utility is entitled to earn on its property. It consists of interest to bondholders and preferred stockholders and dividends or profits to the holders of common stock. It is a return on capital employed and is in addition to all reasonable operating expenses, including annual depreciation and taxes. The rate of return is the percentage of income which a utility is permitted to earn on the fair value of its property or rate base. Multiplying the valuation by the rate of return gives the amount of return. It is the amount of return on the property used in public service that is really involved, and both fair value and rate of return are only intermediary factors required to reach the final result. Thus, valuation and rate of return are inseparably involved in arriving at fair return.

The rate of return is just as important as the rate base in determining the fair return to which the utility is entitled."

--Trachsel on Public Utility Regulation,
1947, pp. 322-323.

COMMISSIONER ANGUS: Does that mean that the surplus is not included in the product of the ---

MR. SMITH: Well, it is usually an over-all rate, my lord; it is usually over-all rate on the whole property. But I intend to deal to the best of my ability with how this fair rate is arrived at.

In considering the American cases one must look at the constitutional position there.

THE CHAIRMAN: I notice they talk of the fair value of the property; does that mean the present valuation?

MR. SMITH: Well, my lord, I intend to deal with that. There has been much controversy in the United States as to how the value is obtained, and I think the word "value" in itself is misleading.

THE CHAIRMAN: Is misleading?

MR. SMITH: Is misleading, yes.

THE CHAIRMAN: Does that just mean ---

MR. SMITH: Because it does not mean value in the economic sense or market sense.

THE CHAIRMAN: What does it mean, then?

MR. SMITH: Well, it means the value that is used for a rate base. That is not answering your question, but I think perhaps if you will bear with me I could expand on that answer, which is not a very good one.

THE CHAIRMAN: Well, you see, the C.P.R. amendment does not refer to valuation, does it?

MR. SMITH: No, it refers to investment.

THE CHAIRMAN: Return on investment.

MR. SMITH: That is right, my lord, and I intend to discuss that question, but in effect it is a rate base.

THE CHAIRMAN: It is what?

MR. SMITH: It is a rate base. That is the basis on which the rates are to be fixed. Then you will ---

THE CHAIRMAN: According to the C.P.R.

MR. SMITH: That is, according to that amendment.

THE CHAIRMAN: Yes, but the fair return would be upon the investment.

MR. SMITH: Yes, my lord. Now, I say when you come to consider---

THE CHAIRMAN: Do you say the investment means the same thing as the valuation?

MR. SMITH: As used - it may or it may not, as used in the cases, but it is going to take some time to explain this, my lord. I am relying mostly on American cases, where, as I said, the concept of fair return on fair value was originated and has been discussed in many cases, but, as I say, it has to be considered first, the American cases have to be considered first, in the light of the constitutional problem in the United States.

The fifth amendment to the Constitution of the United States provides that:

"No person shall be.....
deprived of life, liberty or property without
due process of law; nor shall private property
be taken for public use, without just compensation."

Under the fourteenth amendment:

"No state shall.....deprive any person of
life, liberty or property without due process of
law; nor deny to any person within its jurisdiction the equal protection of the laws."

Now, there were cases in the United States, as to whether these due process clauses applied to commissions and fixing rates of return for public utilities, and, although the earlier cases were to the effect that that was a legislative function and not one for the courts, the earlier cases were reversed, and so we come down to the well-known

case of *Smyth vs. Ames*, 169 U.S. 466, which was decided in 1898. That was a case from Nebraska, in which the following principles were laid down with respect to the return to which a utility company was entitled under the Constitution:

"The question whether they (the rates) are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and therefore without due process of law, cannot be so conclusively determined by the legislature of the State or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry."

That followed the later cases, which had overruled the earlier cases on the point, but those were questions on constitutional law ^{with} which we are not concerned here.

Now, this is the finding with respect to this principle of fair return on fair value;

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway --

Well, in that case it was a railway --

"under legislative sanction" --

it is not a highway in our sense --

"must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

THE CHAIRMAN: On the value.

MR. SMITH: Yes.

"On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

It may be of interest that at this time the counsel for the people was Mr. William J. Bryan, and he was contending that reproduction value should be accepted. At that time they were in a deflationary period and prices were down; it was to his interest to keep the reproduction value rather than an original cost value.

THE CHAIRMAN: You mean a replacement value?

MR. SMITH: A reproduction or replacement value, yes, my lord.

In Bauer and Gold on Public Utility Valuation for Purposes of Rate Control -- this is in the library at the Board of Transport Commissioners -- pages 50-51, it is said:

"This statement has been cited as basic authority by the Supreme Court all along down to 1942." This book was written in 1937; I have added, to 1942:

"It has been accepted by commissions and courts as a fundamental rule for determination in specific cases whether rates are reasonable or inadequate and confiscatory. It has been the subject of innumerable analyses by legal and economic writers. It has been viewed from almost every conceivable standpoint; supported, interpreted in various manners, and even ridiculed. With the years, however, discussion had come to center chiefly on the question whether 'fair value' depends primarily upon 'actual cost' of properties used in public service, 'reproduction cost', or some other fundamental conception; or whether it depends upon no one dominant factor."

(Page 22520 follows

However, in 1942, the Supreme Court of the United States, in Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 U.S. 575, the Court, speaking by Chief Justice Stone, said:-

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the Courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

THE CHAIRMAN: Now, in this country we have not those constitutional limitations.

MR. SMITH: No, my lord.

THE CHAIRMAN: To what extent does all this apply?

MR. SMITH: Well, I think it applies that when this question of investment cost from rate base is to be determined, I think we have to look at it in the light of what practices -- we have adopted the practice from the United States. I was going to point out to your lordship the considerations which are taken in fixing that rate base.

THE CHAIRMAN: That is where the Constitution provides that you cannot deprive anybody of his property without just compensation?

MR. SMITH: Yes, my lord. Well, as I understand it, in the 20% Case, Mr. Priest, a very eminent counsel, was retained by the Canadian Pacific Railway Company and made an argument on this very question as to what is necessary to establish rate base; and I think it is necessary in order that the Board may appreciate the various questions which arise, that one must look at these cases, I think, which throw a great light on how it is determined, and also the writings of the authors to whom I refer as to what are the considerations in the establishment of rate base and fair rate of return. I think possibly if I went on I could establish the point I am trying to make.

THE CHAIRMAN: Well, the point you are trying to make, you are against the fair return on a rate base, aren't you?

MR. SMITH: No, my lord. I don't say that I would - -

THE CHAIRMAN: You are in favour of the amendment?

MR. SMITH: I am against the amendment, because I say it is a restrictive amendment, and I think in order to debate that question you have to consider the points which I would like to raise. Otherwise that is the way I like to present my argument.

THE CHAIRMAN: Yes, I see, but the Courts in the United States - -

MR. SMITH: I quite appreciate the constitutional position.

THE CHAIRMAN: What I am getting at is that in this last case the ruling is that the Constitution does

not bind rate-making bodies to the service of any single formula.

MR. SMITH: Yes, my lord, that is right.

THE CHAIRMAN: So long as they do not do something unjust?

MR. SMITH: I am going to go on from here and just tell the Commission what the decisions in the United States have been: The Constitution, what the practice is in the public utilities, and also what the practice of the Interstate Commerce Commission is, in the light of these judgments.

In a concurring opinion, Messrs. Justices Black, Douglas and Murphy said:-

"While the opinion of the Court erases much which has been written in rate cases during the last half century, we think this is an appropriate occasion to lay the ghost of Smyth v. Ames.....which has haunted utility regulation since 1898....."

In Federal Power Commission v. Hope Natural Gas Co. (1944) 320 U.S. 591, the Court expanded upon its statement in the Natural Gas Pipeline case quoted above by saying:-

"It is not the theory but the impact of the rate order which counts."

I submit that that is pertinent or apposite apart from any constitutional question.

"If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important."

"The rate-making under the Act, i.e. the fixing of 'just and reasonable' rates involves the balancing of investor and consumer interests. Thus, we stated, in the Natural Gas Pipeline Case (315 U.S. 590) that:-

'Regulation does not insure the business shall produce net revenues' but such considerations aside, the investor interest has a legitimate concern in the financial integrity of the Company whose rates are being regulated."

Now, this is the passage on which my friend, Mr. Evans, and I have no doubt, Mr. Priest, relied.

"From the investor or Company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of business. These include service on the debt and dividends on the stock. By that standard, the return on the equity capital should be commensurate with return on investment in other enterprises having corresponding risks; that return moreover should be sufficient to insure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital."

--pp. 603-604

The base that was accepted in that case, my lord, was a base which is what was called actual legitimate cost -- I think that was the term of the Act. It was the Federal Power Act, and it was based on original cost.

Now, perhaps in order that the Commission might just appreciate what I am endeavouring to say on this question of original cost and reproduction cost or investment cost, it might be well just to have some clearer view of that by referring to some of the definitions which have been given as to the method to be employed, and the meanings of the words used. I am now referring again to Trachsel on "Public Utility Regulation", p. 284:-

"The terms: original cost, actual cost, historical cost, prudent investment....."
And you are going to hear perhaps more of those, I should judge, when my friend speaks:-

".....are used more or less interchangeably. Yet they do not mean precisely the same thing to all people.

The original cost of a public utility is the sum of money that has actually been expended in the acquisition and construction of the property which is included in the rate base and which is still used and useful in rendering service to the public.

Actual cost and historical cost also fit into this definition, although the courts ^{have} /at times used the term 'historical cost' in the sense of judging the wisdom of the expenditures to determine whether or not they should have been made.

Prudent investment designates the original cost of the property used and useful in the public service, purchased according to sound and honest judgment. It coincides with the

sum that would reasonably have been expended by a prudent and competent person, that is, not wastefully or dishonestly. Thus it is possible for prudent investment to differ from actual or original cost."

THE CHAIRMAN: Does that mean that prudent investment might probably be less than the actual investment?

MR. SMITH: Yes, my lord, that the question of prudent investment arises in that question.

Now, what I said in these cases, although the case of Smyth v. Ames did not lay down any definite rule but said there was a multitude of cases to be considered -- perhaps "multitude" is too strong a word -- a variety of things to be considered in the establishment of a rate base: yet the courts under that decision more or less went on the theory that it was the reproduction cost that should be taken into consideration; and that original cost, if original cost was taken as a rate base, it would not be within the constitutional powers of the Commission.

THE CHAIRMAN: That what would not be?

MR. SMITH: Within the constitutional powers of the Commission. It would offend, taking original cost as the rate base would offend against the due process clauses of the Constitution.

THE CHAIRMAN: That applies to any method they might adopt. The Constitution protects the property - -

MR. SMITH: Yes, my lord.

THE CHAIRMAN: This last judgment says that the Constitution does not bind rate-making bodies to the service of any one - -

MR. SMITH: To serve any one purpose.

THE CHAIRMAN: To ^{serve} any single formula or combination of formulas. They can adopt any line they like so long as in the result they do not violate the rights of the party under the Constitution.

MR. SMITH: Yes.

THE CHAIRMAN: That is what you are saying?

MR. SMITH: That is what I am saying, my lord.

As is pointed out by Bauer and Gold on Public Utility Valuation for Purposes of Rate Control, at pp. 112-114, actual experience with rate making has demonstrated that there is a fundamental difference between railroads and most other utilities. A local electric or gas property, for example, can be treated independently without regard to other concerns because of its local monopoly. Its total costs can be separately computed and a rate schedule devised so as to furnish the needed revenues. I quote further from this work to show the inherent difference between a railroad and an ordinary public utility:-

"In the case of railroads, the situation is fundamentally different. While costs to each company can be separately computed, including return on an independent rate base, no railroad can be treated by itself in establishment of rates, because of the interlocking of territories served. While each company has local monopoly of service between intermediate points on its lines not served by other railroads, it nevertheless is subject to competition at terminal points, with regard to sectional

traffic, and as to territorial development.....

The individual company cannot have its rates based on separate valuation of its own properties. It is treated jointly with the companies/^{to} which the same rate schedule applies. Its own financial needs can be considered only with the interests of all the companies taken together."

--pp. 112-113

That speaks of the situation in the United States, and in the United States for the most part, railroad rates are interstate in character and come under the control of the Interstate Commerce Commission while local utilities come under the jurisdiction of the States. Railroad rates are not fixed independently there for individual companies. The Interstate Commerce Commission was established by Act of Congress in 1887. Section 1 of the Act required all rates "to be just and reasonable". It was held by the United States Supreme Court that the Commission was without power to prescribe rates for the future, but in 1907 express power to prescribe maximum rates was conferred on the Commission. That is by the Hepburn Act.

The Transportation Act of 1920 was passed by Congress. It prescribed railroad rate making on the basis of total valuation for all railroads as a whole (or as a whole in each of such rate groups or territories as the Commission might from time to time designate) without distinction as to individual conditions of a particular company. It provided for a policy of recapture of excess returns from over profitable companies to be used in part

for assistance of railroads with inadequate returns.

THE CHAIRMAN: That is the point I was wondering about. It does provide that, does it?

MR. SMITH: It did, but that provision was repealed in 1933.

THE CHAIRMAN: Oh, I see. I have found it only to lose it again.

MR. SMITH: The first step towards introduction of the new system had been taken by the passage of the Valuation Act in 1913. Through this legislation, Congress provided for the valuation of all railroads. It placed this task upon the Interstate Commerce Commission.

THE CHAIRMAN: Pardon me a moment, having regard to these Constitutional safeguards, a rule of this sort may be confiscatory in relation to some railroads, mightn't it?

MR. SMITH: Oh, yes, my lord.

THE CHAIRMAN: How do they reconcile that with the Constitution?

MR. SMITH: Well, the section, as I understand Section 5, provides for Federal legislation or for State legislation. I think Amendment No. 14 provides in terms only for State legislation.

THE CHAIRMAN: Only for State legislation?

MR. SMITH: That is the way I read it.

THE CHAIRMAN: That is the one passed after the Civil War to protect negroes?

MR. SMITH: Yes, about that time, but, you see, the 5th amendment provides:-

"No person shall be.....deprived of....
property without due process of law; nor
shall private property be taken for public

use without just compensation."

And the 14th amendment only relates to a state: "No State shall....."

THE CHAIRMAN: In both cases the privation cannot take place except by due process of law?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Perhaps that eats out the safeguard?

MR. SMITH: Due process of law, I think, has been given a fairly wide interpretation.

THE CHAIRMAN: "No person shall be deprived of his property without due process of law". Then it goes on: "Nor shall private property be taken for public use without just compensation".

MR. SMITH: And in the 14th amendment there is added:-

".....nor deny to any person within its jurisdiction the equal protection of the laws".

THE CHAIRMAN: Anyhow, we are unfettered in this country by that.

MR. SMITH: I am just coming down to the difference between the state public utilities and the railroad in the United States. I said that the first step towards introduction of the new system was to have a valuation; and Exhibit 198 which I have already referred to indicates the way in which the work was done by the Commission. It shows the elements of value of property used in common-carrier services of all Class 1 Line-haul Railways in the United States. On page 11 and following pages there is a statement of

the methods employed in the ascertainment of the elements of value as of January 1, 1948, of the used properties of all Class I Line-Haul Carriers. As mentioned therein, the ascertainment of original cost rests in part on the basic inventories and valuations in existence and use on January 1, 1948. This Exhibit was Exhibit No. 1 in Ex Parte 168.

You will notice on the first page there they are showing the cost of reproduction, original cost, present value, and working capital. The other pages show particulars of these costs and present value and working capital for each individual railway. At page 11 there is a statement as to how the value is arrived at. Apparently what is taken, my lord, is the original cost. They take the original cost of the properties except in respect of land, and the ascertainment of original cost depends on the record of proof of cost of the properties in the basic inventories in valuations which were commenced in 1914.

Then there is recourse to estimate of original cost for properties that were in existence at the time of the original valuation and were still in existence and use on January 1, 1948, but for which no record of proof of original cost was then or is now available. Then the record of changes that have occurred in the property subsequent to the date of basic inventory and valuation, reported under oath by the carriers by units and costs, and checked to as late a date as possible by the Bureau of Valuation Engineers and Auditors.

Then it is shown that the basis for estimates is the cost of reproduction new in 1914, that is the way they take it. It says here:

"Reproduction costs at normal prices as of 1914, arrived at by consideration of cost data covering periods of five or ten or more years previous to June 30, 1914, produce, by and large, a fair average of the cost of constructing railroads in most parts of the country during these previous years when the great bulk of railway property then in use had come into existence or was brought to modern form."

Then it says that at the present time, due to additions, replacements and retirements of property since dates of basic valuation, the major portion of the original cost of property earned by Class I carriers is represented by actual cost.

I intend now to refer, my lord, to the rule of rate-making of the Transportation Act of 1920. I think it has been spoken to by some of the counsel who have preceded me, and I don't want to bore your lordship with repetition, but perhaps I can pass over it rather hurriedly. One of the most important provisions of the

Transportation Act of 1920 was the rule of rate-making, incorporated into the law at Section 15a of the Interstate Commerce Act.

THE CHAIRMAN: Is that the role you want us to recommend?

MR. SMITH: No, my lord. This section provided that:

"In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation:

Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable and to prescribe different rates for different sections of the country."

So there you have in 1920 for the first time there was a provision that the Commission was to determine from time to time /what should be a fair rate of return: it had to be uniform throughout the country.

THE CHAIRMAN: On the value of the property?

MR. SMITH: Yes, my lord, on the value of the property, and the value of the property was found by the Commission.

In fixing the fair rate of return the Commission was to give due consideration "to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation." Congress prescribed $5\frac{1}{2}$ per cent, however, as the fair rate of return for the first two years that the section was in force, but it authorized the Commission to add an amount not exceeding one-half of one per cent to make provision for improvements and betterments. The Commission was also to determine the aggregate value of the railroad properties for the purpose of administering the section, but the values found under the Valuation Act of 1913 were to be used when available.

In Reduced Rates 1922, 68 I.C.C. 676, the Commission fixed five and three-quarters per cent as a fair rate of return.

In Rates on Grain, Grain Products & Hay (1921) 64 I.C.C. 85, at page 99, it was said, with respect to Section 15a:

"It does not constitute a guarantee to the carriers, nor is the obligation cumulative. We are not restricted by past or present statistics of operation and earnings. . . . What is contemplated by the law is that in this exercise of our rate-making power the result shall reflect our best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return."

There are many railroads in the United States that

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have never received a fair return upon the value of their property and probably never will. The most important reason for this situation is the economic impossibility of charging rates that will yield a fair return to all railroads.

The United States Supreme Court has clearly stated that the fair-value rule cannot protect a carrier from all business hazards.

"The due process clause of the Fourteenth Amendment . . . does not assure to public utilities the right under all circumstances to have a return upon the value of the property used. . . . The clause of the Constitution here invoked does not protect public utilities against such business hazards."

Public Service Commission of Montana v. Great Northern Utilities Co. (1933) 289 U.S. 130, 135.

Section 15a, as originally passed, made use of the fair-return-on-fair-value concept but applied it to the carriers "as a whole" or as a whole in rate groups.

As has already been mentioned Section 15a underwent complete revision in 1933. All mention of fair return on fair value was eliminated from the section. The recapture provisions were also repealed. The new rules required the Commission in prescribing reasonable rates to give due consideration, among other factors,

"to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management,

to provide such service."

The reasons for the complete removal of any reference to fair return on fair value are said by Professor Locklin, in his book on the Economics of Transportation, 3rd ed., to have been due to a number of circumstances. I quote from Locklin, at pp. 354-355:

"The complete removal of any reference to fair return on fair value was due to a number of circumstances. One of these was the difficulty involved in the ascertainment of 'fair value'."

Another reason for removing the specific direction to the Commission to prescribe a certain rate level was that such a requirement seemed to place the revenue needs of the carriers ahead of all other considerations in fixing rates. The carriers were constantly urging upon the Commission the view that whenever earnings fell below the contemplated fair return on fair value the Commission was under legal obligation to grant increases in rates requested by the carriers regardless of other considerations. The Commission had refused to accept this interpretation of Section 15a, (See Reduced Rates, 1922, 68 I.C.C. 676; 730 (1922); and Fifteen Per Cent Case, 1931, 178 I.C.C. 539; 575-577 (1931)) but the language of the section gave some colour to the contentions of the railroads.

THE CHAIRMAN: That section was repealed?

MR. SMITH: That section was repealed, but it is not unlike the section proposed by the C.P.R., my lord. It provides for a fair return on property and this section which is proposed by the C.P.R. --

COMMISSIONER ANGUS: The difference is that one names a percentage --

MR. SMITH: No, in neither case did it name a percentage. Section 15a did not name a percentage: it said "a fair rate of return".

THE CHAIRMAN: Well, the constitutional requirements still stand, 5 and 14, don't they: whatever they were. The constitutional requirements are still there, that is Section 5, I think it is.

MR. SMITH: Yes, my lord, they are still there.

THE CHAIRMAN: Doesn't it all come back to that, that it doesn't matter what method you take so long as you do not unjustly deprive anybody of his property -- you can go ahead.

MR. SMITH: That is what it means in that, yes.

THE CHAIRMAN: Isn't that right?

MR. SMITH: That is right, my lord, but I say that this provision which they had in the United States, the provision there was not unlike the one that is proposed by the Canadian Pacific Railway.

THE CHAIRMAN: You mean the one that they did have and which has been repealed; is that it?

MR. SMITH: Yes, my lord, because the suggestion made by the Canadian Pacific Railway, that rates shall not be deemed to be just and reasonable unless taken as a whole they are sufficient to provide a fair return on the investment on the railway property: that is quite like the section which was repealed inasmuch as to establish it:

" . . . earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value . . . "

THE CHAIRMAN: You say Mr. Locklin gave reasons why that was unworkable?

MR. SMITH: Yes.

THE CHAIRMAN: The difficulty involved in the ascertainment of fair values.

MR. SMITH: That is the first reason.

THE CHAIRMAN: I don't think this amendment talks about values.

MR. SMITH: No, my lord, it talks about investment. I don't think we need deal with that. That was more or less under the constitutional difficulties.

A third criticism of the original Section 15a was clearly revealed during the depression years following 1929. The Rule of Rate-Making implied that railroad earnings could be stabilized, whereas earnings are subject to wide variations due to changes in the volume of traffic, which, in turn, are dependent upon general business conditions. The Interstate Commerce Commission recognized that railroad earnings would fluctuate with changes in business activity and refused to adopt a policy which would make rates vary inversely with the volume of business. Thus, in Fifteen Per Cent Case, 1931, 178 I.C.C. 539 at pp. 575-577, the Commission refused a substantial increase in rates during a depression, saying:

"It is only necessary to have in mind the incongruous results which would follow an attempt to adjust rates so that a stable rate of return would be realized, notwithstanding general business conditions and the rise and fall of traffic in consonance therewith, to realize the unreasonableness and impracticability of any such policy."

Notwithstanding this interpretation placed upon Section 15a the language of the Section seemed to imply higher rates in periods of depression in order to carry out the mandate of the law. This was undoubtedly a factor in causing Congress to modify the language of Section 15a.

COMMISSIONER ANGUS: When I asked a moment ago about the fixed rate of return, I see the Commission was to fix it after the first two years.

MR. SMITH: They fixed it after the first two years.

COMMISSIONER ANGUS: Congress did it?

MR. SMITH: Congress fixed it.

COMMISSIONER ANGUS: Then the Commission was to fix it?

MR. SMITH: Then the Commission was to fix it.

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COMMISSIONER ANGUS: Then it fixed it at 5 3/4%?

MR. SMITH: It was fixed, yes, at 5 3/4%.

COMMISSIONER ANGUS: Then you were able to speak in your Brief of the contemplated fair return in respect of this 5 3/4%?

MR. SMITH: For the first two years Congress fixed it at 5 1/2, and then it was fixed at 5 3/4.

COMMISSIONER ANGUS: The carriers are constantly urging upon the Commission the view that whenever earnings fall below the contemplated fair return - -

MR. SMITH: Yes?

COMMISSIONER ANGUS: That would be a fair return fixed by the Commission itself after the expiry of the first two years, wouldn't it?

MR. SMITH: Yes, sir.

COMMISSIONER ANGUS: Did they vary that return from time to time?

MR. SMITH: No, it was never varied; mostly it was never earned.

THE CHAIRMAN: When did it disappear?

MR. SMITH: In 1933.

THE CHAIRMAN: By the Act being repealed or by the Commission - -

MR. SMITH: By the Act, the Rule of Rate-making being repealed, this one, 15a.

Notwithstanding this interpretation placed upon Section 15a by the Commission, the language of the section seemed to imply higher rates in periods of depression in order to carry out the mandate of the law. This was undoubtedly a factor in causing Congress to

modify the language of Section 15a.

THE CHAIRMAN: I suppose it is argued that: There is the law and you must give us a rate that will produce that - -

MR. SMITH: Yes, my lord, and this proposed amendment is open to the same objection, reduced to simplicity.

The revised Section 15a does not neglect the revenue needs of the carriers. Revenue need is specifically mentioned as one of the factors to be considered by the Commission, but it becomes one of three factors specified instead of the only one mentioned in the section.

THE CHAIRMAN: The Act itself provides that rates must be just and reasonable, the Act itself, our Act?

MR. SMITH: Yes.

THE CHAIRMAN: This Amendment says that the rate shall not be deemed just and reasonable unless - -

MR. SMITH: Yes, my lord.

I suggest that another factor which must be taken into consideration under the revised section is the effects of rates on the movement of traffic.

Locklin points out at p. 356 that this factor has been given considerable weight in numerous cases since 1933 which have involved the levels of rates and fares and that the Supreme Court of the United States has recognized that consideration of the revenue effects of the proposed rate changes is properly a function of the Commission.

In Sharfman on the Interstate Commerce Commission which is a book over at the library in the Transport Board, (1936), Vol. III B, p. 295, it is said:-

1870
The first of the year was a very dry one, and the crops were much injured by the drought.

The second of the year was a very wet one, and the crops were much injured by the rain.

The third of the year was a very dry one, and the crops were much injured by the drought.

The fourth of the year was a very wet one, and the crops were much injured by the rain.

The fifth of the year was a very dry one, and the crops were much injured by the drought.

The sixth of the year was a very wet one, and the crops were much injured by the rain.

The seventh of the year was a very dry one, and the crops were much injured by the drought.

The eighth of the year was a very wet one, and the crops were much injured by the rain.

The ninth of the year was a very dry one, and the crops were much injured by the drought.

"The hope that rate regulation will at all times afford earnings adequate but not excessive -- that a formula involving property value and a rate of return thereon will mark out for the railroads a calm course through troubled economic waters -- is obviously an illusory one.

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In the Fifteen Per Cent Case, 1931, 178 I.C.C. 539, the Commission refused to grant a 15% increase in rates in that year. The Commission quoted with approval a statement in Corpus Juris that:

"the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth, and this right takes precedence even over the right of the carrier to a fair return on its investment when the two cannot stand together."

In Covington & Lexington Turnpike Co. v. Sandford (1896) 164 U.S. 578, at 596, it was said:

"It cannot be said that a corporation is entitled, as of right, and without reference to the interests of the public, to realize a given per cent upon its capital stock. . . . The rights of the public are not to be ignored. . . . The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

This dictum was quoted with approval by Messrs. Justices Black, Douglas and Murphy in Federal Power Commission v Natural Gas Pipeline Co. supra at p. 607, where they said: after quoting the above passage with approval:

"It re-emphasizes . . . that the investor interest is not the sole interest for protection. The investor and consumer interest may so collide as to warrant the rate-making body in concluding that a return based on actual cost or prudent investment, though fair to investors, would be greatly unfair to customers."

Exhibit 267 A and B contains selected income items by regions and districts of Class I Steam Railways in the United States and shows, inter alia, the net railway operating income of all Class I Railways in the United States for the years 1947 and 1948, as well as for the whole of the country and for the districts and Pocohontas region. I have already referred to Exhibit 198. By deducting the recorded depreciation and amortization shown in Exhibit 199 for all these Railways from the valuations contained in Exhibit 198 which are made up of the aggregate of the original cost (except lands and rights) present value of lands and rights and working capital and applying the net operating income shown in Exhibit 267 A and B, the rate of return of each railway can be readily computed.

I have mentioned Ex Parte 168, 276 I.C.C. 9.

The valuations for rate making purposes of the property in common carrier service of Class I Line-Haul Railways by district and region and for the total United States are shown in the last column on page 18. These valuations are based on Exhibits 198 and 199, which were Exhibits 1 and 2 in that case. The figures are identical with those contained in Exhibits 198 and 199.

At page 41, it is pointed out that if the increases proposed in the petition of the railroads were granted, it is estimated by them that it would increase the freight revenues of Class I Rail Carriers by \$538,000,000. After making all necessary adjustments, it was estimated by the Commission that if the rates sought in the petition were granted, the average rate of return on all United States Railways would be 4.03%. The rates sought in the petition were not granted but were reduced materially.

This is, I submit, the best evidence obtainable as to the present rate of return in the United States.

COMMISSIONER INNIS: You have no statement indicating the range of the return; you just have the average?

MR. SMITH: Well, it shows the average by districts, but it would be very simple to work this out.

COMMISSIONER INNIS: Well, would the range vary from very high to very low?

MR. SMITH: There is one region which is much higher than any, and that is the Pocohontas region, which is the coal district, and there are some railways, the ore carriers.

THE CHAIRMAN: Coal and ore.

MR. SMITH: Coal and ore, yes, are the aristocrats, as far as earnings are concerned.

COMMISSIONER INNIS: And who are the poor relations?

MR. SMITH: Well, the big eastern railways I would think, like the New York Central and the Pennsylvania, which are two of the largest railways in the United States, and nearly all the big railways, with certain exceptions. The Santa Fe has a good rate of return, and I think the Union Pacific. The Union Pacific in addition has quite a large amount of other income. But generally it could be shown that the rate of return is not very high in the United States. However it could be easily calculated as far as 1948 and 1947 are concerned.

COMMISSIONER INNIS: I think it makes a difference, because you are arguing about the aggregate or the average, whereas you are thinking of one railway in Canada, the Canadian Pacific Railway.

MR. SMITH: Yes. .

COMMISSIONER ANGUS: : When you are proposing that a railway should be the yardstick, do you think that makes it comparable to the United States average?

MR. SMITH: Oh, there are differences.

COMMISSIONER ANGUS: Or do you think other considerations come in?

MR. SMITH: There are differences, Dr. Angus. I am just endeavouring to show what the position is in the United States and then trying to draw some conclusions from that.

COMMISSIONER ANGUS: You will apply that later to the Canadian yardstick?

MR. SMITH: Well, as one of the factors to be considered. Here are railroads in the United States, and they are not in all respects the same. There are no railroads in the United States that are transcontinental railways in the true sense, that is, from coast to coast, but there are also large railways systems in which the same principles are applicable, I suppose, as to the right to a return on investment.that might be requested, and therefore I think that the information which I am giving the Commission is a factor to be considered, but I do not say it is adetermining factor.

COMMISSIONER ANGUS: When I said you would apply it, I really meant, show us how far it should be a factor, show us its importance as a factor.

MR. SMITH: Well, I think it is an important factor.

I do not propose to discuss the question as to the proper establishment of a rate base. I was not present, but I understand my friend Mr. MacPherson made submissions in that regard.

THE CHAIRMAN: You say you adopt his?

MR. SMITH: I adopt what he said. I can amplify it to some degree if necessary, but perhaps it is of some importance to this Commission to know what the contentions of the Canadian Pacific Railway were as to what constitutes the establishment of a rate base. I do not know whether the Commission wants to consider that, or to leave that matter for determination by the Board. If you feel that I could be of any assistance in dealing with the question --

THE CHAIRMAN: I do not quite understand. You wish to know whether we --

MR. SMITH: Whether you wish to hear argument as to how a rate base should be established.

THE CHAIRMAN: Well, you said that Mr. MacPherson has submitted --

MR. SMITH: What Mr. MacPherson did, as I understood it, was to discuss some of the arguments that were made in the 20% case; particularly I think he referred to the argument of Mr. Priest, and as I understand it he suggested that that was not the way to establish it. But Mr. Evans in this present hearing has reiterated that the C.P.R. did beyond question establish a proper rate base by the production of Exhibit 49/49, the so-called split balance sheet, and by the evidence of the witnesses that were called in support. Now, I do not know whether this Commission wishes to go into that question as to how it should be established. I have authorities on it and I can deal with it, but I do not want to waste the time of the Commission.

THE CHAIRMAN: Are the authorities in your brief here?

MR. SMITH: No. I have the authorities with me, and I can discuss the matter.

THE CHAIRMAN: Well, suppose you gave us the authorities; are you referring to decided cases?

MR. SMITH: Yes, I am referring to the practice as to how a rate base is established usually under the public utility practice in the United States.

THE CHAIRMAN: In the United States?

MR. SMITH: In the United States; and there are some cases in Canada; I think Mr. MacPherson gave you a British Columbia case. There are also provisions in the Public Utilities Act. In my own province of course it is a statute and there are statutory requirements in the Nova Scotia Public Utilities Act which provide that it must be based on prudent original cost.

(Page 22551 follows)

THE CHAIRMAN: Does that mean an investigation of the original cost to see whether they were prudent or not?

MR SMITH: Yes, my lord.

THE CHAIRMAN: And do you say then the rates are based on it?

MR SMITH: Yes, they are based. Then there is provision for fixing a rate of return and also establishment of a rate base, and the methods by which that rate base is established.

THE CHAIRMAN: Are you favouring the adoption of such a practice in the case of railways by the Board?

MR SMITH: I am not discussing that question. I do not think that---

THE CHAIRMAN: Well, you see, you tell us that you adopt the argument of Mr. MacPherson, who made very cogent submissions as to the proper establishment of a rate base.

MR SMITH: He was dealing with how a rate base is established. I am dealing with the question as to whether or not the Canadian Pacific Railway submission should be adopted -- that is in connection with taking the investment of the Canadian Pacific Railway Company as the rate base. Now, I understood---

THE CHAIRMAN: Do I understand you to say, then, that in Nova Scotia by your legislation you do take the investment into consideration, examine it, and see whether it was prudent or not? Is that right?

MR SMITH: In effect we have a valuation based on original cost, and that valuation is accompanied in many cases by physical examination.

THE CHAIRMAN: Why do you mention that? Is it because you want us to---

MR SMITH: No, my lord. I was directing my remarks, my lord, to the question as to how a rate base should be established, and in this case---

THE CHAIRMAN: That is, if there is to be that.

MR SMITH: If there is to be a rate base; and the C.P.R. in their amendment have suggested an investment rate base. Now, I said that Mr. MacPherson discussed as to what was a proper rate base, how it should be established. He was not satisfied with merely taking a rate base of the investment as shown in the books of the company. He said you had to go far beyond that. Now, what I am saying is, I do not know whether the Commission wishes to discuss that matter or whether that is a matter of mechanics for the Board rather than for this Commission to examine. But I do say that if the Commission considers it is a matter to be looked into by this Commission, I would like to make some submissions with respect to that ascertainment, the ascertainment of a proper rate base.

COMMISSIONER ANGUS: Mr. Smith, there might possibly be this question, that Mr. MacPherson spoke of some of the points that he would raise if a rate base were being discussed and they had to do, among other things, with the original grants to the Canadian Pacific.

MR SMITH: Yes, my lord.

COMMISSIONER ANGUS: When it was under construction.

MR SMITH: Yes, my lord.

COMMISSIONER ANGUS: Now, the question might arise as to whether the importance to be given to those points was a question that the Board as a tribunal could deal with, whether it was something that was within its purview, its ordinary purview, or whether those raised questions that might require some other form of settlement.

That might be a point.

MR SMITH: Well, in such a case I do not think there would be any legal restriction on the Board from deciding, especially under this amendment. The amendment provides that the Board shall find what the investment is.

COMMISSIONER ANGUS: Well, you agree or disagree?

MR SMITH: The provision says here:

"And the Board may from time to time determine the investment in railway property upon which it is to be calculated."

This amendment suggested that the Board shall have that power.

COMMISSIONER ANGUS: Yes. And then Mr. MacPherson indicated some of the issues that he would raise if the matter were being argued before the Board.

MR SMITH: Yes.

COMMISSIONER ANGUS: And my question is, in view of that, is the Board the best tribunal to make a calculation of that kind?

MR SMITH: Well, it would be the only tribunal, if the amendment were passed.

COMMISSIONER ANGUS: If the amendment were passed.

MR SMITH: Yes, the only tribunal. I do not know of any other tribunal that could decide the question.

THE CHAIRMAN: The amendment would make it the duty of the Board to determine the investment in railway property.

MR SMITH: Yes, my lord.

THE CHAIRMAN: That would lead immediately to contention. Mr. MacPherson was saying what he would contend.

MR SMITH: Yes.

THE CHAIRMAN: According to the amendment, the Board would have to listen to all that and then determine.

MR SMITH: Yes. What I point out is, farther on in my argument, that there is no mention in determining that investment as to any matters to be taken into consideration. For instance, it is universal---

THE CHAIRMAN: Would you say the Act ought to set out what matters shall be taken into consideration?

MR SMITH: Well, at least there are certain matters that are axiomatic that would have to be covered.

THE CHAIRMAN: That are what?

MR SMITH: Axiomatic, I say, in the determination of any rate base. For instance, the question of depreciation.

THE CHAIRMAN: Well, if they are axiomatic would they not be urged in that form before the Board?

MR SMITH: No, I do not think they could be. But if you just take the investment, does the word "investment" there mean the depreciated investment or the undepreciated investment?

MR EVANS: The investment on which the return is to be earned.

MR SMITH: "Shall provide a fair return upon the investment in the railway property."

THE CHAIRMAN: Not the value of the railway property.

MR SMITH: The investment in the railway property. The investment in the railway property certainly would not leave room for deducting from that investment depreciation on it, or it would not leave room for the application of the prudent investment theory. However, I am really getting ahead of my argument in dealing with this point.

THE CHAIRMAN: You need not shorten your argument at all, as long as you remain within your time.

MR SMITH: I do not know what my time is.

MR COVERT: We are adjourning in three minutes, and you will have about I think fifteen minutes left.

MR SMITH: Well, I suppose I can govern myself accordingly.

THE CHAIRMAN: Does your time expire today?

MR SMITH: My time will expire in---

MR COVERT: Well, we are adjourning very soon.

THE CHAIRMAN: Well, is that the end of it?

MR COVERT: No; he has about fifteen minutes more, I think.

MR SMITH: Well, my lord, perhaps I had better not waste my time on it. I would perhaps---

THE CHAIRMAN: Mr. Smith, if you have anything in writing, and want to save time, let us have it in writing.

MR SMITH: Well, I could refer your lordship to some textbooks, perhaps, on the point.

THE CHAIRMAN: All right.

MR SMITH: The best statement, I think, possibly, on the question of ascertainment of original cost is found in "The Economics of Public Utility Regulations," by Irston R. Barnes of Yale University.

MR SINCLAIR: Is that the quotation that is in the transcript that you put in before?

MR SMITH: No.

THE CHAIRMAN: Where in Barnes, what page? Well, we will find it.

MR SMITH: It is the ascertainment of original cost -- the whole question of the nature of original cost is discussed at pages 404-415, and the ascertainment of original cost I think is at -- I have not got the exact page.

THE CHAIRMAN: Are you saying that we will find

in Barnes the principle that should be applied by the Board in interpreting their duty under this proposed C.P.R. amendment?

MR SMITH: What I am saying is, it lays down the principles which are followed; it is the practice which is followed in public utility ascertainment of the principle of original cost on the so-called prudent investment theory, which is the investment theory.

THE CHAIRMAN: The word "prudent", though, is there, is it?

MR SMITH: Well, not necessarily so. I say that under public utility practice the original cost and the prudent investment theory are practically interchangeable.

THE CHAIRMAN: Well, I am not quite sure whether you are saying that if you leave the language of this amendment as it is and adopt the amendment, then you will find in the authorities the axiomatic rules which the Board would have to adopt in determining what their duty really was. Now, are you saying that or not?

MR SMITH: Yes, my lord, I am. I am saying that is the practice, if they follow the rules that have been laid down by all public utility commissions practically over the North American Continent.

THE CHAIRMAN: Well, wouldn't they do that? That is what they would do, isn't it?

MR SMITH: No, my lord. I am afraid we are at cross purposes.

THE CHAIRMAN: Well, either you want the amendment adopted -- you rule it all out; you are against the amendment.

MR SMITH: I am against the Board being circumscribed in the fixing and determining of fair and reasonable rates by a provision, by only one provision, namely, the

fair return on the investment of the C.P.R. I say I am against that, and I was just endeavouring to assist the Commission as to what that meant under the public utility practice. I intend to---

THE CHAIRMAN: Are you saying that under the public utility practice it means something else? A prudent investment must be considered, and so on?

MR SMITH: I say prudent investment must be considered.

THE CHAIRMAN: And do you say there would be no room for the consideration of prudence under this amendment? Is that it?

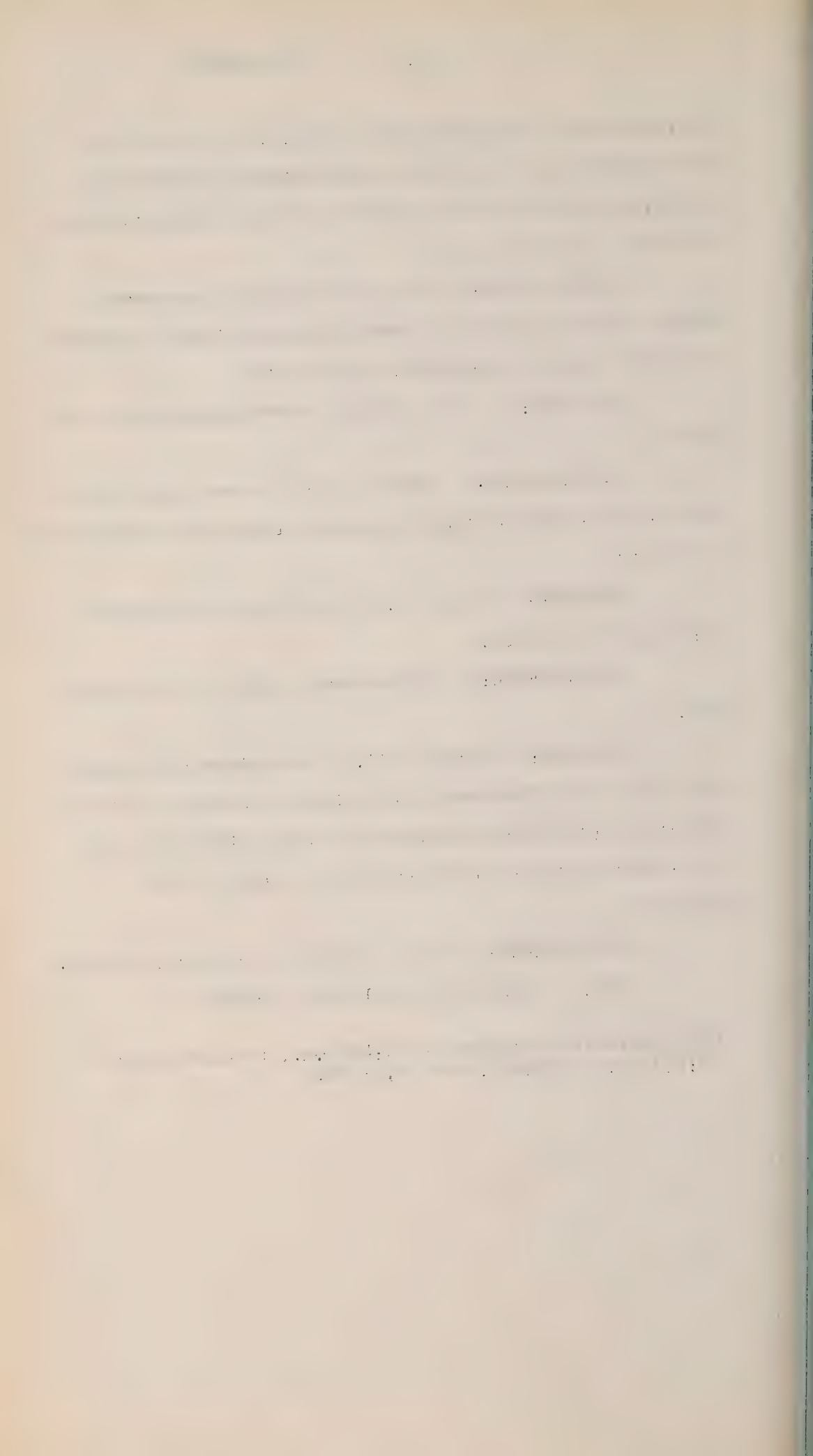
MR SMITH: Well, yes, I say that it is capable of that interpretation.

THE CHAIRMAN: And you want, then, if the amendment---

MR SMITH: First of all, I am against the amendment; and if the amendment meets with the approval of the Commission I wish some protection or some guides or tests to be contained in the legislation as to what is the investment.

THE CHAIRMAN: I see; I think I see what you mean. Well, I suppose we had better adjourn.

---The Commission adjourned at 4:49 p.m., to meet again at 10:30 a.m. on Monday, May 15, 1950.



A-R.

Canada
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

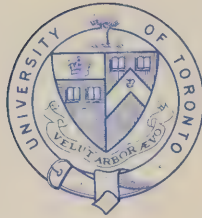
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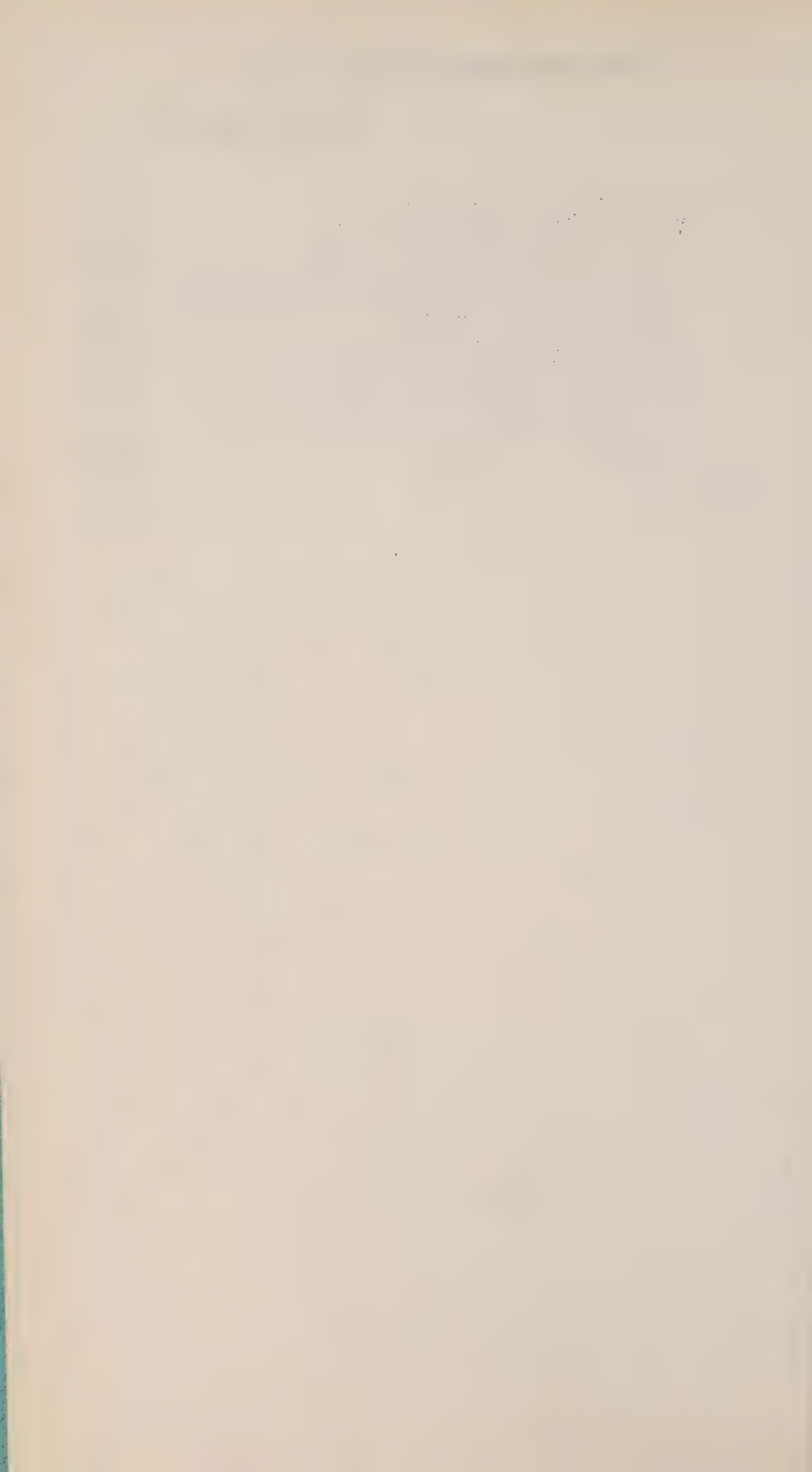
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THE ROYAL COMMISSION ON TRANSPORTATION

Monday, May 15, 1950,
Ottawa, Ontario.

THE HONOURABLE W.F.A. TURGEON, K.C. LL.D. - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

- - - - -

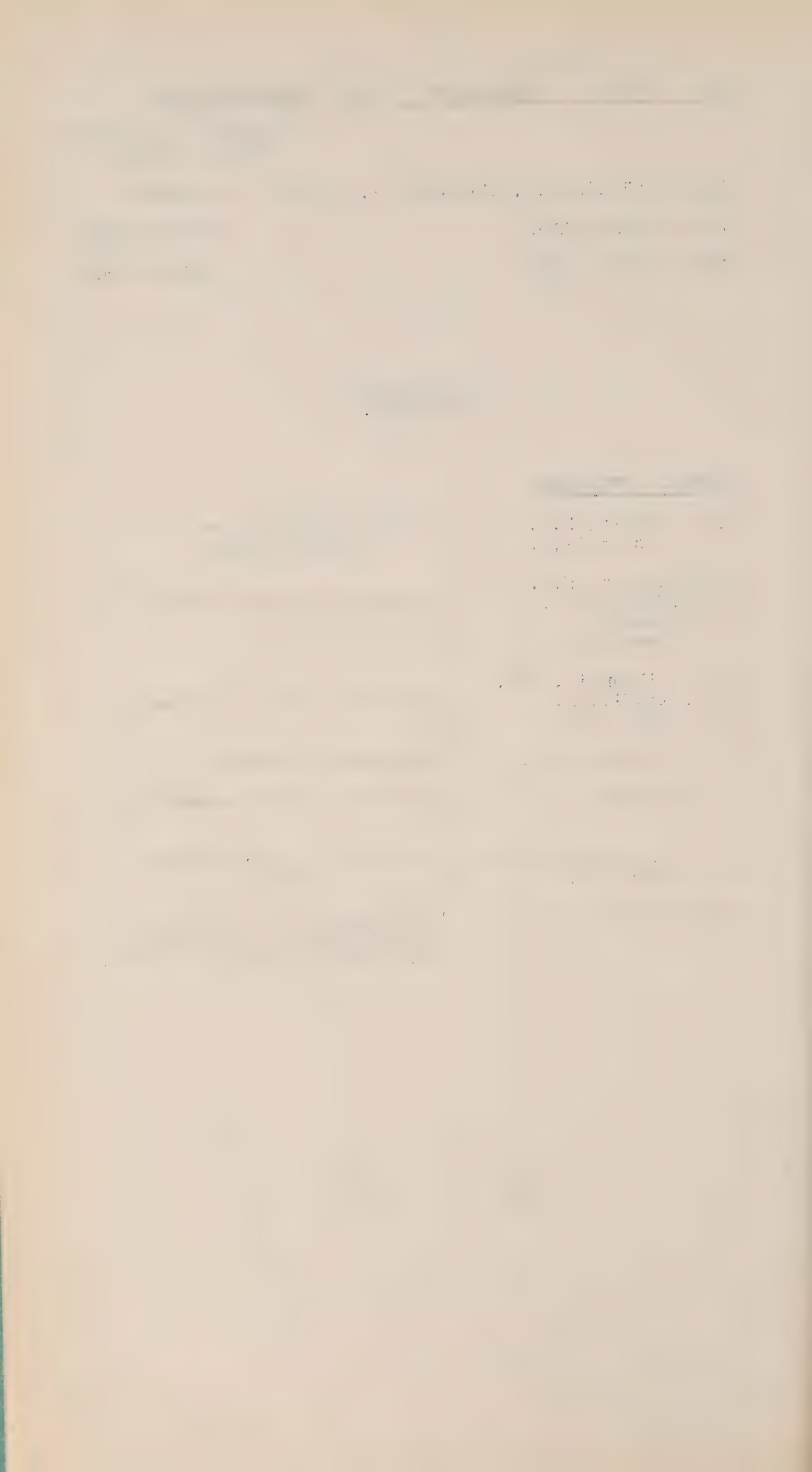
G. R. Hunter,
Secretary.

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COUNSEL APPEARING:

| | | |
|-------------------------|---|--|
| F. M. Covert, K.C. | } | Royal Commission on Transportation |
| G. C. Desmarais, K.C. | | |
| C.F.H. Carson, K.C. | } | Canadian Pacific Railway |
| F.C.S. Evans, K.C. | | |
| K.D.M. Spence, | | |
| I. D. Sinclair | | |
| H. E. O'Donnell, K.C. | } | Canadian National Railways |
| N. J. MacMillan, | | |
| H. C. Friel, K.C. | | |
| J. J. Frawley, K.C. |) | Province of Alberta |
| J. Paul Barry. | } | Province of New Brunswick |
| | | |
| J. O. C. Campbell, K.C. | } | Province of Prince Edward Island |
| W. E. Darby, K.C. | | |
| Frank D. Smith, K.C. |) | Province of Nova Scotia, Transportation Commission of the Maritime Board of Trade. |

- - - - -



Ottawa, Ontario,

Monday, May 15, 1950

MORNING SESSION

ARGUMENT BY MR. SMITH (Contd)

THE CHAIRMAN: Are we going on with the Nova Scotia case?

MR. SMITH: Still with the Nova Scotia case. I was at page 61 of the written memorandum. I am starting at the second paragraph.

If one may judge from the evidence of Mr. Norman, at Volume 114, page 20718, and following pages, upon the adoption of the fair return on investment method, the question of financial requirements will not even serve as a test of the fair return. He there expressed the view which I assume is shared by the Canadian Pacific Railway Company that it is contrary to the spirit of rate making by means of a proper return on a proper investment to test the return by the financial requirements of the utility.

In passing I may suggest to the Commission that there are different views on that question. The matter is discussed by some of the textbooks writers and the practices which have been adopted in the various rate-making bodies are referred to. Time does not permit any extended presentation of this aspect of the case. Perhaps it might be of interest to the Commission if I referred to two or three authors on this point. The matter is discussed by Bigham and Locklin and the references to this question are as follows: Bigham on Transportation at pages 279 and 280, and Locklin at pages 408, 409 and 411. I will also quote a short statement from Barnes. I have already given your lordship

the title of the book. It is at page 519 and reads:

"The establishment of the rate of return cannot and should not ignore the relation of the rate base to the capitalization of the corporation nor the composition of that capitalization."

In my respectful submission -

1. Until such time as the financial burden carried by the Canadian National Railways has been greatly reduced, the requirements of the Canadian Pacific Railway Company should be the guide or measure for the establishment of just and reasonable freight rates.

THE CHAIRMAN: What would you do if that happens?

MR. SMITH: That is covered in the next paragraph.

2. If and when the Canadian National Railways shall have been placed on a reasonably comparable basis with the Canadian Pacific Railway, then the financial needs of both Railways will have to be considered.

3. The authority of the Board to fix, determine and enforce just and reasonable rates should not be fettered or circumscribed by the amendment proposed by the Canadian Pacific Railway Company.

I think it is of interest to note that there has been some comment upon the fact that the Canadian Pacific Railway in its original submission did not ask for an amendment of Section 325 of the Railway Act. It was only when the Canadian National Railway proposals were made, after Mr. Gordon's evidence or statement was given, that the Canadian Pacific presented an amendment.

THE CHAIRMAN: They simply indicated in their submission what they thought ought to be done concerning their company.

MR. SMITH: Yes, my lord, but they did not ask for any amendment in their original submission.

THE CHAIRMAN: They did not submit any amendment until the matter of amendments arose in discussion later. Does their submission not indicate what they thought ought to be borne in mind though?

MR. SMITH: Yes, I think it is clear that they are in favour of a rate of return on a rate base theory rather than a requirement theory. Nevertheless I submit that their submission would indicate that they were content to leave that matter to the Board until the Canadian National Railways' proposal was submitted.

4. As I have said, the reference to fair-return-on-fair-value was taken out of the relevant statute in the United States. The reason for the removal of any reference thereto has already been referred to. These reasons apply with equal force to the Canadian situation.

5. The only specific reference in the Railway Act as to what constitutes just and reasonable rates should not be one for the protection of the railroad and its shareholders. There are other factors of equal if not greater importance, as I have already suggested.

6. Experience has shown that a formula including property value, or investment value for that matter, and a rate of return did not mark out for the United States' railroads a clear course through troubled economic waters.

7. The proposed amendment might create very serious consequences in a depression.

8. Parliament should not bind the rate making body to the service of any single formula. It is not the method employed but the result which is important.

9. If a rate base should be established, the

Board should not, in any event, determine the rate of return without taking into account and giving consideration to the financial

(Page 22563 follows)

requirements of the Company as well as the other factors which I have mentioned in the course of my argument, and all other relevant conditions and circumstances existing at the time. The statute should not prevent the Board from doing so.

10. While opposing the enactment of the proposed amendment or any amendment requiring the Board to fix rates upon the basis of a fair return on the railway property of the Canadian Pacific Railway, it should be observed that there is no provision in the proposed amendment for the deduction of accrued depreciation from the investment nor does it contain any reference to property used or useful or to prudent investment.

I suggest that the only alteration, if there is to be any, in the just and reasonable rule of rate-making as presently contained in the Railway Act should be one similar to that in the present Section 15a of the Interstate Commerce Act. The amendment to Section 325 which I have proposed and which I discussed in relation to horizontal increases follows closely the provisions of Section 15a. It will be observed that it does not contain the words which are found in the present section "and to the need of revenue sufficient to enable the carriers under honest, economical and efficient management to provide such service". I did not insert these words in the proposed amendment because of the present position of the Canadian National Railways.

Now, I conclude my argument, therefore, on this branch of my submission by suggesting to your

Commission that there should not be any amendment as proposed. I also point out to you the history of railways in the United States; that a fixed rate of return did not provide a panacea for all the ills to which the railways are heir; and that it is my submission that it will not do so in Canada. After all it is the end result which should be looked at, and I submit that in the circumstances it is inadvisable to fetter the Board in the exercise of its jurisdiction by prescribing just one formula, and that of necessity it is most difficult to apply the same measuring rod for the fixing of just and reasonable rates in respect to railways which has been adopted in self-contained public utilities.

I do not think there is anything more I can usefully add. I am sorry that perhaps I have taken too long on this question.

Now, the next topic which I wish to discuss is the question of :-

REVISION OF THE CAPITAL STRUCTURE
OF THE CANADIAN NATIONAL RAILWAYS

At p. 42 of the Submission of the Government of Nova Scotia, it was stated that it would seem that there should be a downward revision of such capital structure but that it would not be in a position to make specific submissions until the proposal of the Canadian National Railways as to revision had been submitted and considered.

The proposals for revision of the capital structure of the Canadian National Railways are contained in a submission, supplemented by the statement of its Chairman and President, and the testimony of Messrs. Cooper

and Fairweather, two of its Vice-Presidents.

It will be observed that at p. 5 of its Submission, it is stated that it is doubtful that at any time there has been or could be a fair return from current earnings on the huge amount of private capital and public funds invested in the Canadian National Railways.

The statement is made by Mr. Gordon at Vol. 98, p. 18372, that by comparison with other railways an undue proportion of the capital of Canadian National is represented by interest-bearing securities, that the advisability of making a realistic adjustment in the capital structure and the extent of such adjustment are the questions which arise. At p. 18373 it is suggested by him that a realistic capitalization of the Canadian National must, of necessity, be related to its future earning power.

I suggest that no one can reasonably quarrel with these assertions.

It is, I submit, undoubted that for the reasons set out in the statement of the Chairman and President, an excessive capital burden has been imposed upon the Canadian National System and that, consequently, there should be an adjustment of its capital structure.

In order to be able to appraise the excess of the capital burden of Canadian National and of the propriety of the measures suggested for its rectification, it would, I submit, be necessary to make a detailed study and have the benefit of the best available advice from those who have the requisite knowledge and experience in the management and operation of a great railway system. In the absence of such information, it is impossible for me to weigh the accuracy of the estimates

made of the excess of the capital burden of Canadian National or of the propriety of the measures proposed to adjust it. However, in my submission, it is desirable that Canadian National and Canadian Pacific should be on a reasonably comparable basis.

COMMISSIONER ANGUS: Mr. Smith, what do you mean by a "reasonably comparable basis"?

MR. SMITH: Well, a reasonably comparable basis is, I suppose, a basis where their earning power will be on a reasonably comparable basis. At the present time there is no doubt that the Canadian National has been loaded with an excessive debt burden.

COMMISSIONER ANGUS: You mean the earning power over fixed charges?

MR. SMITH: The earning power over fixed charges, yes, that is what I really mean.

Mr. Gordon states that it is his considered opinion - -

Of course, there are other matters to be taken into consideration, such matters as Mr. Fairweather discussed, on which I need not dwell now. He suggested matters such as traffic density and things of that kind.

THE CHAIRMAN: You are asking that the Canadian National Railways be placed on a reasonably comparable basis with the Canadian Pacific Railway?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: You seem to assume that the plan submitted by the Canadian National Railways would have that effect?

MR. SMITH: Well, insofar as I am able to appraise the situation, I submit that I am in no position to appraise the weight of the debt burden, if the

\$760 million is more or less than the amount that should be written off.

THE CHAIRMAN: How far are you prepared to go as between the two railways?

MR. SMITH: I will deal with that as my next point.

states
Mr. Gordon/that it is his considered opinion, concurred in by the Board of Directors, that nothing short of the measures suggested by him will be adequate treatment of the capital structure of Canadian National and that these measures, if put into effect, should enable Canadian National, on the average, to meet its fixed charges, including interest on funded debt. (Vol. 98, p. 18388).

(Page 22568 follows)

The considered opinion of the Board of Directors and management of Canadian National Railways is, I suggest, entitled to respect and I have not the effrontery to assert that the proposal is not one worthy of the utmost consideration. That is about as far as I can go.

THE CHAIRMAN: When I asked you that question I was reading ahead of you, on the next page.

MR SMITH: Subject to what I have said, on behalf of the Government of Nova Scotia, I agree in principle with the plan proposed by Canadian National.

I realize that Canadian Pacific have expressed great concern as to the possible prejudicial and indeed destructive effect upon it if the proposals of Canadian National are adopted.

The fear expressed by Canadian Pacific is that surplus earnings of Canadian National, unless they are bound to be turned over to the Government, will lead to pressure which will produce a tendency to make Canadian National the yardstick for the fixing of freight rates. That is a statement by Mr. Evans at Volume 110, page 20262. Canadian Pacific requested Canadian National to support legislation making Canadian Pacific the yardstick for the fixing of rates until some solution is found guaranteeing that Canadian Pacific, while efficiently operated, will have sufficient money to carry on as a private enterprise. (Vol. 110, p. 20264).

The position of Canadian National, on the other hand, is that it is not asking your Commission to recommend that its needs, after the adoption of the capital revision plan, shall be the measure and yardstick as far as freight rates are concerned. That is a statement by Mr. O'Donnell in volume 110, at page 20262.

As Canadian National believes that the Board, in

its judgments, has recognized that freight rates must be just and reasonable to all railroads and to the shippers, it is satisfied to leave that question within the jurisdiction of the Board. That is another statement by Mr. O'Donnell in volume 110, at pages 20262 and 20263.

THE CHAIRMAN: Now, it is this next paragraph that I was reading.

MR SMITH: I have already suggested that if and when the Canadian National Railways shall have been placed on a reasonably comparable basis with the Canadian Pacific Railway, the financial needs of both Railways will have to be considered.

THE CHAIRMAN: Then do I understand that that is as far as you wish to go, that the two railways should be placed on a reasonably comparable basis with each other?

A. I say when they have been placed on a reasonably comparable basis, yes, my lord, then it will be time enough for the Board to consider the Canadian National in the fixing of just and reasonable rates.

THE CHAIRMAN: What I want to say is this: if it should turn out that the plan submitted by the Canadian National Railways goes beyond that, and puts the Canadian National Railways in a much preferred position to that of the Canadian Pacific---

MR SMITH: I am not advocating that, my lord.

THE CHAIRMAN: Then do we take it that what you are advocating is that whatever readjustment is made should put the two railways on a reasonably comparable basis Is that what you say?

MR SMITH: Yes, my lord.

COMMISSIONER ANGUS: Mr. Smith, when you say "the financial needs of both Railways will have to be considered," how are you defining the financial needs of the Canadian

National Railway? Are you using the phrase on page 66, "should . . . on the average . . . meet its fixed charges, including interest on funded debt"?

MR SMITH: That is only an estimate, my lord; that is only an estimate made, or it is perhaps an opinion, as to what the result will be.

COMMISSIONER ANGUS: When you speak of financial needs, you mean something more than that?

MR SMITH: Well, the financial needs of the railway I would think should be left to the Board. That is my view, that the Board should meet this question of a fair and reasonable rate of return, a fair and reasonable freight rate structure, when it has to. Now, I submit it is dangerous, it is almost impossible, to peer into the future and attempt to lay down any fixed rules at this time as to what matters should be taken into consideration when the plan has been put in effect. It will have to be worked out, perhaps by trial and error. The situation which will evolve will be an unusual one. It is difficult to find a situation, perhaps, where you will have a publicly-owned railway and a privately-owned railway which will monopolize in large measure the whole railway situation in Canada. It is my submission that until such time as this legislation has scaled down the capital structure of the Canadian National Railways, it is, with respect, premature to endeavour to lay down hard and fixed rules with respect to what matters should be taken into consideration.

COMMISSIONER ANGUS: But if the financial needs -- that is your phrase -- of the Canadian National Railway are going to be used either so as to give the Canadian Pacific something more than its ^{own} financial needs, or to give the Canadian Pacific something less than its own financial needs, the financial needs of the Canadian National must be

independently determined by some standard. One cannot just say that its earning power at rates fair to the Canadian Pacific Railway determine its financial needs.

MR SMITH: Well, of course, the first thing is to put the Canadian National Railway, as I see it, in a position where it can earn. Now, it may be that with the same freight rates, even if you have a company, the Canadian National Railway, we will say, with relatively the same fixed charges, the Canadian National by reason of its inferior traffic density will not be able to earn as much as the Canadian Pacific Railway. Now, that matter will have to be taken into consideration; that would have to be taken into consideration if you put both railways on a rate of return and rate base theory, because I think you have to take into consideration that the Canadian National, if Mr. Fairweather's evidence is to be accepted -- and I see no reason why it should not -- is in an inferior position to the Canadian Pacific Railway, and perhaps always will be. Now, that is a matter to be taken into consideration by the Board of Transport, and I say until you have had some experience with this new venture, if I may put it that way, it is most difficult to lay down hard and fast rules as to what the guide or test should be. I cannot peer into the future and give any help or assistance to this Commission -- my time is about up, I am told, my lord -- as to what the future will hold.

COMMISSIONER ANGUS: I am not asking you to do that, Mr. Smith. I was really wondering if, as you use the word "needs", that word has any meaning different from "earning power".

MR SMITH: Well, there will also have to be considered, I think, by the Board what would place the railways on a relatively fair basis apart from earning power. I think

that is as far as I can go, my lord. I cannot attempt to lay down whether the money that the Canadian National Railways should earn should be one per cent or three per cent or five per cent above its earning power. I think that is a matter for the Board.

THE CHAIRMAN: Over and above what? Should earn what did you say?

MR SMITH: Should earn, we will say, on its equity capital, the amount that should be earned on its equity capital -- whether there should be any earning on its equity capital.

THE CHAIRMAN: Is that the basis you wish to accept for the C.N.R.?

MR SMITH: I beg your pardon?

THE CHAIRMAN: Is that the basis that you think ought to be accepted in so far as the Canadian National is concerned?

(Page 22575 follows)

MR. SMITH: I would leave the matter to the Board. The Board will have before it all this information. As I see it, all the Canadian National Railways are asking for at this time is that they may be relieved from the capital burden which they say is unfair to them and that they obtain assistance that will enable them to be in a position to earn.

THE CHAIRMAN: Yes. But you keep on using the word "needs". You keep saying that the financial needs of both railways will have to be considered.

MR. SMITH: Yes, the financial needs. Perhaps I was using the term that has been used in connection with the Canadian Pacific Railway.

THE CHAIRMAN: I understand in the United States, having regard to their method of arriving at rates, they have a great number of railways, and they group them up in different groups and then strike averages.

MR. SMITH: Yes.

THE CHAIRMAN: Here in this country we have only two railways.

MR. SMITH: Yes.

THE CHAIRMAN: Substantially, that is all we have. You would not suggest an average between those two, would you?

MR. SMITH: I think of course we can have only one rate, but the Board would have to take into consideration--

THE CHAIRMAN: I mean in fixing the rate?

MR. SMITH: In fixing the rate.

THE CHAIRMAN: Would there be a possibility for any such thing as an average here as they have over in the United States?

MR. SMITH: I think that would be most difficult. But I must confess that we really--

THE CHAIRMAN: Suppose you could arrive at the needs, and you could find out that the needs of one of these two railways is twice as great as the needs of the other. Then what would you do? How would you fix the rate?

MR. SMITH: By the needs, you mean -- ?

THE CHAIRMAN: What you mean; you used the word.

MR. SMITH: The object of the proposals of the Canadian National Railways is, I suppose, to put their house in order. Up until this time they have not asked this Commission for any ruling or recommendation with respect to the question as to how rates are going to be fixed in the future. My suggestion is that any discussion as to that is premature at this time. I think we have to wait until they come and ask for that, if they do. Until such time it is my suggestion that we go on as we have. As pointed out by Mr. O'Donnell, the Canadian Pacific Railway has been able to grow and prosper over sixty years. During that time, for over forty years they have been under regulation by the Board of Transport Commissioners or, as they were called originally, the Railway Commissioners. I think that the affairs of the Canadian Pacific Railway are slightly exaggerated, to say the least. I do not anticipate any real difficulty when the matter comes to be discussed before the Board or comes to be determined by the Board.

COMMISSIONER INNIS: What do you mean by "earn"? Am I to assume that you are thinking that the actual traffic handled will be much greater after the capital revision has been made, or is the capital revision simply a matter of changing red to black?

MR. SMITH: Red to black, I would say. I cannot prophesy as to whether the traffic of Canada will be greater.

As I understand it, the plan of the Canadian National is to give them a break, to see whether they could put them in a position so that they are able to meet their fixed charges out of their earnings.

COMMISSIONER INNIS: All it means is to some extent getting free from the more direct control of Parliament. It is just a matter of balancing accounts.

MR. SMITH: Yes, to a certain extent it is that way. But I do suggest that every Commission including the Duff Commission, has recognized that there was an unfair burden placed upon the Canadian National Railways system. I have not got the relevant quotation, but what they say is that with respect to the Canadian National they realize that that was the position but they did not think that was the opportune time to go into that question.

COMMISSIONER INNIS: Then it comes down to rather vague talk of morale, because it comes to a question of being able to blast across the headlines that the C.N.R. has had a surplus rather than a deficit, whereas the public is perhaps no further ahead one way or another.

MR. SMITH: No. It is a matter entirely of book-keeping.

COMMISSIONER INNIS: That is right. I was wondering what you meant by what you said. Do you mean something where there actually is an increase?

MR. SMITH: No. I am not looking forward to an increase. That is a matter that I cannot assist on. What I am concerned about is ^{that} the question of fixing just and reasonable rates be left to the Board in order that the practice which has been followed up to the present time of fixing rates be continued and that the Board be not fettered by the use any one formula. It is the end result that I am interested in, representing the people of the province.

I have endeavoured to point out the factors which should be taken into consideration by the Board in its determination of what are just and reasonable rates. In my respectful submission, it is impracticable to lay down hard and fast rules with respect to question which must be determined in the future under changed conditions and circumstances.

I have quoted from a Judgment of the Supreme Court in the United States in which it was said that rate making bodies should be free within the ambit of their statutory authority to make the pragmatic adjustments which may be called for by particular circumstances. That is true, I submit, with respect to the situation which will arise in the future if and when the Canadian National Railways have been placed on a reasonably comparable basis with the Canadian Pacific Railway. The power of the Board, in my respectful submission, should remain, as at present, unfettered.

THE CHAIRMAN: Mr. Smith, to what Judgment are you making reference there? You say, "I have quoted from a Judgment". You have quoted from many. Which one is that?

MR. SMITH: It is a Judgment from which I have already quoted, my lord. I think it is the Pipe Line Case.

THE CHAIRMAN: You say they should be free within the ambit of their statutory authority.

MR. SMITH: Yes

THE CHAIRMAN: Within the ambit of their statutory authority? What do you mean?

MR. SMITH: By that I mean the present statutory authority to fix, determine and enforce just and reasonable rates.

I see that my time is up. I had intended --

THE CHAIRMAN: Do you know what case that is, for the sake of easy reference, Mr. Smith?

MR. COVERT: Page 49, Federal Power Commission and Natural Gas.

MR. SMITH: I intended, my lord, to say something about co-operation. You will find what I have to say at pages 69 to 72 of my brief. I think it will have to be taken as read in the circumstances.

THE CANADIAN NATIONAL-CANADIAN PACIFIC ACT, 1933.

In Paragraph 210 of the Report of the Duff Commission, under the heading of Cooperation between the Railways, the fact is emphasized that a principal weakness of the past decade had been the failure of the railways to act together in their own interests and in the interests of the public, that it was not enough that each should take all practical measures of economy in respect of its own system and that there must be joint action with a view to savings in the wider sphere.

Paragraph 211 then makes a recommendation for the rectification of that situation.

The purpose of Part II of the above Act was to implement the recommendation contained in Paragraph 211.

The Province, in its Submission, at pp. 44-50 (Vol. 71, pp. 14687-14615) referred to these paragraphs of the Duff Report, as well as to the provisions of the Act. It also directed attention to the investigation of the Committee appointed in March 1938 by the Canadian Senate and to the Report of that Committee with respect to cooperation.

As pointed out in the final paragraph of the Committee's Report, it was stated that in the interests of the railways and of business generally, "further and more serious attempts should be made to give effect to the letter and spirit" of the Act and that, in the opinion of the Committee, offered the only practical course, looking to the improvement of the present railway difficulties.

Your Commission has been furnished with evidence as to what has been done and what is being done under the Act and has had the benefit of hearing the evidence of Mr. Armstrong and Mr. Fairweather.

There appears to be a substantial difference of opinion between them with respect to the opportunity for further cooperation.

Mr. Armstrong doubts that cooperation can attain to annual savings equal to those already attained, while Mr. Fairweather does not think it possible for anyone, especially speaking for one railway, to estimate in dollars and cents the scope of future cooperation activities. He thinks that substantial economies are possible in the large field of cooperation and that such field should be carefully explored. He also believes that this is one of the managerial fields available to railways in meeting their present troubles and says that in the Canadian National Railways, attention is being directed to cooperative economies as part of the managerial problem. (Vol. 117, pp. 21191-21192.)

I suggest that one can be excused, upon learning that the arbitration provisions of Part III have never been invoked, for having some doubts as to whether the Railways have, in point of fact, agreed and continuously endeavoured to agree upon cooperative measures.

There is the same problem in the United States. Section 15a of the Interstate Commerce Act provides that the Commission shall give due consideration, among other factors, to the need in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service.

I submit that the Duff Commission, in making the recommendation contained in Paragraph 211 had the same thought in mind.

The Interstate Commerce Commission, in Ex Parte No. 168, (1949) 276 I.C.C. 9, in discussing a motion made by the Secretary of Agriculture that as a pre-requisite to the granting of the increases sought, the Board should institute an investigation for the purpose of determining whether or not they had been efficiently and economically conducted as contemplated by Section 150, said at pp.28 and 29:

"In our original report herein, December 29, 1948, above cited, we referred to certain previous proceedings wherein we had recommended that particular things be done in the interest of economy and efficiency in rail transportation, and we pointed out that since 1931 we have conducted a continuing investigation, Ex Parte No. 104, into and concerning practices of the railroads which affect their operating revenues or expenses, under which we have investigated certain of those practices. We are constantly studying railroad operations and from time to time we announce the results of these studies and make appropriate comment and recommendations looking to improvement and increased efficiency of railroad service."

Reference is made to the motion in the earlier report of the same case in 272 I.C.C. 695, at p. 705, to reports of the Federal Co-ordinator of Transportation and to the Board of Investigation and Research which indicated that savings were possible through elimination of unnecessary duplication of facilities and services and to the mass of evidence developed in the past by other agencies of government and by the Commission respecting economies to be achieved, through cooperation, in the services and facilities of the railroads.

It is my submission that the Board should make a continuing investigation into this very important subject and I therefore support the amendment proposed by Mr. Shepard as to the duty of the Board to make independent studies and investigations, in respect to the affairs of the company. (Vol. 118, p. 21383.)

I realize that it is most difficult at this time to suggest any workable amendment to the Canadian National-Canadian Pacific Act. I agree with Mr. Shepard that there should be what he termed "a policing" of the Act.

In my submission, the only way this can be done effectively is to have the Board make such investigations from time to time with a view to determining the feasibility and efficacy of changes in railroad practices designed for the elimination of duplication of facilities and services. After such studies have been made, one will be in a better position to recommend the legislation necessary to put into effect the changes which have been found advisable, as a result of the investigation.

Now, my lord and gentlemen, I am presenting the Transportation Commission of the Maritime Board of Trade--

THE CHAIRMAN: Have you another volume? Is it the same volume as this?

MR. SMITH: No.

THE CHAIRMAN: What is the name of the Commission again?

MR. SMITH: It is the Transportation Commission of the Maritime Board of Trade, represented by Mr. Matheson, the manager. I do not propose to read all this brief, my lord. I intend to refer to some passages and I will make some comment as I go along. It is a brief prepared by Mr. Matheson, and as he could not present it, he asked me to present it as counsel.

INTRODUCTION

The Transportation Commission of the Maritime Board of Trade appreciates this opportunity to present an argument in relation to the evidence placed before your Commission, and to make such recommendations as it considers necessary to give effect to its submission.

For ready reference, evidence of the Transportation Commission of the Maritime Board of Trade, including associated witnesses, will be found in:

- Volume 18 - Pages 3377-3480
- Volume 19 - Pages 3482-3682
- Volume 20 - Pages 3683-3920
- Volume 23 - Pages 4375-4548
- Volume 24 - Pages 4549-4658
- Volume 37 - Pages 7127-7172
- Volume 38 - Pages 7175 -7339
- Volume 39 - Pages 7341-7467

Witnesses appearing in substantiation of the material incorporated in the brief were:

- Clarence J. Morrow... Volume 20 - Pages 3807-3820
- R. D. Sutton..... Volume 20 - Pages 3823-3825
- John R. Bigelow..... Volume 20 - Pages 3826-3833
- C. M. P. Fisher..... Volume 37 - Pages 7127-7172
- A. R. French..... Volume 38 - Pages 7175-7206

References will also be made to evidence of witnesses who appeared on behalf of the Maritime Governments, with whom this Commission cooperated in preparation of material consistent with this Commission's submission, and also to other evidence of interest by provinces and interests in the Maritimes.

In compliance with the suggested memorandum of procedure issued by Provincial Counsel on December 16, 1949, this argument is divided into the following general headings:

THE ECONOMIC AND GEOGRAPHIC ASPECTS

As to the case of this Commission, it was extensively covered in Part One of its brief, and associated Exhibits. While the historical background of the transportation situation was developed in some detail, it is respectfully submitted that it is not necessary, in the considerations of your Commission to go back beyond 1927 when the Dominion Government by passing the Maritimes Freight Rates Act not only gave effect to but also incorporated in statute form the findings of the Duncan Commission on the purpose and intent of the Intercolonial Railway and related claims of the Maritimes prior to that date.

It was to the changes and effects thereof subsequent to 1927 that the submission of this Commission is directed in establishing briefly that transportation changes have taken place which have had the effect of nullifying to some extent the benefits intended by the Maritime Freight Rates Act. No better summation of the objective of this Commission's case can be made than in the words of the Chairman at p. 7314 of Volume 39.

"In his exposition of his case Mr. Matheson told us that conditions had altered so much in the way of freight rates, competitive rates, and so on, that the special arrangement made concerning the Maritimes had been eaten into."

In support of the claims of this Commission it will be remembered that considerable statistical data and other information was submitted to indicate the economic situation today as to:

- (a) The low valued and basic production of the Maritimes.
- (b) Its dependence upon exports of surpluses.

THE CHAIRMAN: That is, of the Maritimes.

MR. SMITH: Yes, of the Maritime provinces.

To continue:

(c) The effects of the relatively adverse economic trend compared with Canada as a whole since Confederation.

(d) The industries being generally small scale with only limited local markets.

(e) The relative lack of urbanization.

(f) The relatively lower purchasing power.

The economic aspects of the Maritimes are covered at pages (a) to (f) and pages 1 to 49 inclusive of the submission Exhibit 47 and in Volume 18 of the Transcript, pages 3377 to 3467 inclusive.

It is to be emphasized that the Maritimes are experiencing today almost the same problems of re-adjustment to the changing and unfavourable market conditions as after World War 1, which had the effect of worsening the economic position of the Maritimes, particularly in relation to the Central Provinces. These problems are influenced by:

(a) The relatively increased cost of transportation to the Central Canadian markets and the disadvantages stemming from reduced costs of distribution and improved services because of motor truck competition in the Central Provinces.

(b) The loss or worsening of export markets by tariff restrictions, exchange difficulties, and trade policies of other nations.

The lag of the Maritime Provinces behind the rest of Canada is indicated in later statistical information than that originally presented in this Commission's brief. More recently, the loss of pitprop market in the United Kingdom, the considerably decreased purchases of lumber

by the United Kingdom, the re-adjustment in the apple industry because of the loss of the United Kingdom apple market, the uncertainty associated with potato exports to the United States, and the effect of shortages of "hard currencies" in foreign markets are matters of general knowledge. Even with the buoyant economic conditions generally prevailing, the Maritimes have experienced some industrial shifts attributable in part at least to increased costs of transportation as instanced in the opening of a plant in Montreal by N. H. Schwartz and Sons Ltd., of Halifax, N. S.

(Page 22590 follows)

In the presentation of the case for the Canadian Pacific Railway Co., reference was made to the submission of the Provinces bearing directly or indirectly on various matters covered in this Commission's brief.

Time does not permit me to read all the pages. It refers to the various contentions of the Canadian Pacific Railway Company with which the Transportation Commission of the Maritime Boards of Trade wishes to deal specifically. They are covered by head notes.

MR. EVANS: Will you give us the references?

MR. SMITH: Yes, I will.

The various contentions of the Canadian Pacific Railway Co. with which this Commission wishes to deal specifically are covered in the following head notes, under which are incorporated this Commission's reply.

- I A Comparison of Railway Rates in
the Northern New England States
Compared with the Maritimes would
not be unfair because operating
conditions are similar

This Commission submits that a comparison of freight rates between the Maritimes and the Northern New England States predicated only on operating conditions overlooks the much higher railway wage levels in the United States which constitute such a relatively high proportion of railway operating expenses. The higher wage levels in the United States and the reasons for being so was discussed in the reports of the Conciliation Board, dated April 15th, on railway wage demands:

"It is abundantly clear that wages of all workers, not only of railroad employees but of all classes of wage-earners, are higher in the United States than they are in Canada. The fact is that the United States possesses a

richer and more mature economy than Canada and that, presently at any rate, our production is not such as to afford us so high a standard of living as there is in the United States."

Mere comparisons of rate levels between Canada and the United States are of no probative value nor is the comparison of rates between points in New England and points in the United States vis a vis rates between the Maritimes and other parts of Canada as set out in Exhibit 142. Basically the rates applicable to the Eastern United States as set out in that Exhibit were prescribed by the Interstate Commerce Commission, predicated on conditions and circumstances found to exist in the territories involved. (See Eastern Rates Case 164, I.C.C. 314 at page 405.)

With reference to rate comparisons between Maritime Canada and the United States placed on the record at pages 4797 and 4798 of Volume 25 and page 6769 of Volume 35, this Commission stresses that it is not enough merely to compare rates between Canada and the United States, and the Board of Transport Commissioners has said in several cases that rates between points in the United States or between a point in Canada and a point in the United States are not criteria of the reasonableness of rates in Canada, see Canadian Shippers v C.N.R., 32 C.R.C. 3, and Canada Sugar Factories v C.P.R., 40 C.R.C. 299.

If conditions and circumstances were on all fours or substantially similar, rate comparisons might bear some weight. It does not necessarily follow that because rates are not comparable the principles, from which the resultant rates flow, are not comparable.

Operating conditions, level of wages, density and consist of traffic, competition, miles hauled, terminal conditions, etc., may and do create differences in rate levels between different territories but that does not change the criteria for the determination of reasonableness.

Comparisons were also made between rates in other parts of Canada and Maritime interterritorial rates, or rates to and from the Maritime Provinces. Such comparisons overlooked the fact that the Maritime interterritorial rate structure is generally grouped reflecting also competitive influences while a large number of the rates compared with the group rates were -- generally so-called distance rates. Comparisons between distance rates and so-called group rates have not been accepted by either the Board of Transport Commissioners or the Interstate Commerce Commission. In the judgment in the General Rates Investigation, 1925, Volume XVII, J.O.R. & R., the Chief Commissioner in discussing one of the arguments put forward by the C.P.R. against extending the main lines Crows Nest rates to the branch lines, said as follows:

"That there never had been a mileage scale or anything approaching it, but on the contrary, the rates were made on a zoning principle which is inconsistent with the rigid mileage scale."

The Board has also stated that:

"The mere comparison of distances without consideration of the peculiar circumstances affecting the traffic is not the final criterion of discrimination." Canadian Oil Cos. v. G.T., C.P. and C.N.R., 12 C.R.C. p. 354:

British Columbia Coast Cities v. C.P.R.

7 C.R.C. pp 142-143; W. R. Plaunt v.

Algoma Central & Hudson Bay Ry Co.

et al, XVIII J.O.R. & R. (1929) p. 441 and
p. 457.

In addition, the Interstate Commerce Commission has stated:

"In establishment of blanket or group rates there is of necessity more or less disregard of distances." Panhandle Lbr. Co. v. Fort Worth & D.C. Ry. Co., 210 I.C.C. 353 (354).

"Comparisons of distances over routes through the respective gateways are of little probative value when large areas are blanketed at origin and destination." J. C. Penney Co., Inc., v. Butte, A. & P. Ry. Co., 219 I.C.C. 1(3).

"Comparisons of point-to-point rates have little probative value in instances where the rates are extensively grouped, both as to origin and destination." Surpass Leather Co. v. Fonda, J. & G. R. Co., 225 I.C.C. 163 (164).

- II As a result of the Plan of Assisting the Economy of the Maritime Provinces there has been established a certain amount of industrial and other development which might possibly have not taken place without the plan.

It cannot be denied that the Maritime Freight Rates Act has been beneficial to the Maritime Provinces. However, as stated previously, changes have taken place which have tended to nullify the statutory advantages under the Act. It is to be noted that the Canadian Pacific Railways at page 50 of Part 1 of their brief,

while not approving the form of assistance provided by the Maritime Freight Rates Act, acknowledges, in supporting the continuation of this legislation, that the Act has established a certain amount of industrial and other development which possibly might not have taken place without the plan. It follows that any industries which have been encouraged by the plan should not subsequently be jeopardized by changes which may destroy the benefits thereof.

III Assistance to an Area should not be in the form of transportation subsidies and any subsidy granted by the Dominion Government for the relief of economic disadvantage should be distributed to all economic interests within the area according to their needs

The method of implementing the findings of the Royal Commission on Maritime Claims by adjustments in freight rates and reimbursements for such adjustments commends itself not only because of its relative simplicity in application but as stated by the Royal Commission on Maritime Claims on page 22 -

"The course we suggest has the effect of giving immediate relief in a manner that is equitable as well as broad."

When distance from markets is an important factor, such as in the case of coal movements to the principal markets of Canada, the relating of the form of assistance to freight rates, whether the payment is made to the producer or to the Railways, offers a very easily administered and effective scheme of implementing justifiable aid. Another illustration of assistance predicated on freight rates is the Feed Grain Assistance Plan.

- IV In comparison with the population Statistics of the Northern New England States it is hard to see any sign of a special handicap upon the Maritime Provinces.
- V The Clearest and Most Inclusive Index of Development is in relative population.
- VI Trade in Canada would still tend to move East and West, not North and South, in respect of many important commodities were this country to engage in economic union with the United States
- VII Economic Conditions in the Maritimes are favourable and the Maritimes have created a very stable society and are limited in area and have only certain forms of natural resources which have nothing to do with transportation.

It is contended in the Canadian Pacific Railways' brief that the clearest and most inclusive indication of development is in relative population and comparisons are made with the population statistics of the Northern New England States with the Maritime Provinces, and the conclusion is reached that it is hard to see any sign of a special handicap upon the Maritime Provinces, and that the population figures at least do not indicate that the Maritimes are suffering under some special disadvantage within Canada.

In a publication of the United States Department of Commerce, entitled "State, Regional, and Local MARKET INDICATORS 1939 - 1946", prepared in the Marketing Division, by Paul H. Anderson, (Exhibit No. 281), there are these statements on Page 3 -

"Population figures alone would be more useful market indicators if the desires, needs, income, and buying habits of all people were

alike. - -- Effective market demand cannot be estimated without considering ability to buy, and this requires information on income and buying power."

"A declining population, for example, does not necessarily indicate a loss in buying power. In fact, there is evidence that much of the civilian migration that took place during the war was among low-income groups and, therefore, led to a much greater change in the markets for some products than for others."

It is not sound to conclude that the economic position of the Maritimes is favourable in relation to a part of the New England States, particularly when this conclusion is based principally on population figures. Better criteria for comparison would be farm income, individual income, bank deposits, employment and manufacturing, etc., as observed in an appraisal of New England's economic prospects in an article in the Harvard Business Review of March, 1948, (Exhibit 283), at page 162 -

"The trends both of total income and of per capita income in New England from 1919 to 1946 have paralleled the trends of the same items for the entire continental United States."

and on page 164 -

" . . . per capita income in New England has consistently exceeded the national average, the ratio between the two being higher in years of depression than in years of prosperity, largely because of the greater stability

of New England's total income."

Suffice it to draw to your Commission's attention that in the year 1946 the estimated population of the States of Maine, New Hampshire and Vermont totalled 1,740 thousand with a total income to individuals of \$1,843 million or a per capita income of \$1059, as compared with an estimated total population in the Maritimes in the year 1946 amounting to 1,231 thousand with a total personal income of \$733 million or a per capita personal income of \$618. (See Exhibits 280 and 281.) In other words, the per capita income of the three states mentioned was \$1,059 as against \$618.

These income figures alone constitute cogent evidence to indicate the superior economic well-being of the Northern New England States in contrast with the Maritimes, which population data "per se" fail to reveal.

The economic history of the Maritime Provinces indicates that the contiguous United States territory to the South-Westward of the Maritimes has been, and is today, the natural market for a large part of Maritime production, except that trade barriers have tended to impede the full trade development that otherwise would obtain. A similar conclusion was reached by Professor W. A. Mackintosh in his study for the Royal Commission on Dominion-Provincial Relations when he said to the effect that - without the protective policy, the Maritimes would have traded more with the Eastern United States, Great Britain, and other countries, and, as stated in Book 1 of the report of the Sirois Commission at page 159, it is a reasonable presumption that in the Maritimes new export industries would have been encouraged and possibly more local industries developed.

Since it is generally conceded that the Eastern

United States is the natural market of the Maritimes and that without the protective policy the Maritimes would have traded more with the Eastern United States, one cannot accede to the claims put forward by the Canadian Pacific Railway that the trade of the Maritimes would still tend to move east and west were this country to engage in economic union with the United States. Already a substantial proportion of Maritime production finds an outlet in the United States despite customs tariffs, embargoes, and quotas. The freight rates on these exports also reflect revisions in rates effected from time to time in the United States and authorized on international traffic.

The general tenor of the evidence of the Maritime approach as contained in the evidence of this Commission's witnesses who appeared before your Commission is that the changes which have taken place since the Maritime Freight Rates Act became effective in 1927 are having the effect of enhancing the difficulty of Maritime producers in reaching the highly competitive markets of Central Canada in competition with industries located closer to the markets.

While the case on behalf of the potato industry will be argued more fully by Counsel for New Brunswick and Prince Edward Island, your Commission is directed to page 113 of this Commission's brief, wherein it is stated:

"A study of production and distribution costs of Maritime potatoes, coupled with market phenomenon, leads to the conclusion that freight rates are generally absorbed by the growers. It follows that increased freight rates aggravate the competitive position of the Maritime

producer and tend to restrict his marketing area."

Particularly apposite to the potato and apple industries of the Maritimes are similar studies by the Traffic Department of the Association of American Railroads in connection with the incidence of freight rates on fresh fruits and vegetables lead to the same conclusion, as evidenced in Exhibit 47, Appendix 1-B, at page 4, where appears the following statement of Mr. Walter J. Kelley, Traffic Officer of the Association of American Railroads:

"Fresh fruits and vegetables usually are sold at destination at public or private sale. In either case, freight charges are deducted from the amount realized when remittance is made to the producer. This means that the cost of transportation is borne by the producer.

"Without an adjustment of rates which would enable producers located at the more distant producing areas to compete in eastern markets with other producers located closer to those markets, the long distance shipper would be without adequate markets to take care of his production.

"To give you some idea of the extent to which differences in distance are disregarded in rate adjustments of this character, 'in the case of the rates on citrus fruit not only do all producing points in California have the same rates to each destination in the east, but all destination points east of Chicago and Cincinnati take the same rates."

The rates on food products, particularly fruits

and vegetables, have been given particular attention in the general revenue cases in the United States. In all the general revenue cases since 1946 less than the basic increases by various methods have been authorized on fresh fruits and vegetables.

The situation in connection with the lumber industry, which will probably be dealt with more fully in the argument of the Province of New Brunswick, is briefly to the effect that increased freight rates is a factor which will tend to cause Maritime producers to curtail. (See evidence of Mr. Colin MacKay, Volume 23, page 4356). Moreover, the Maritime lumber producers have been confronted with greater competition stemming from the fact that lumber is being trucked to the principal markets of the Central Provinces from nearer sources, with advantages such as the elimination of the extra handling involved in rail shipments. Since the Maritimes' market in the Central Provinces is limited principally to low grade, horizontal percentage increases in freight rates tend to bear more heavily on the Maritime producer than in the case of the producers located nearer the markets.

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The fish industry has also indicated considerable concern over increasing freight rates. It was pointed out before your Commission that Maritime fish is almost entirely handled by rail service. On the other hand, in the United States fish is handled mostly by truck. It is submitted that the increasing of rates will likely encourage to a greater degree the same pattern of distribution as across the border, indeed, the competition of United States sources will probably hasten the greater utilization of refrigerator trucks in the distribution of Maritime fish products not only in the United States

but also in Canada where inroads are now being made.

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The impact of the freight rate changes since 1927 on Maritime manufacturers, particularly those dependent upon sources of raw materials involving long hauls, is evidenced in the testimony of Messrs. C. M. P. Fisher and A. R. French, representatives of stove manufacturers located at Sackville, N.B.

Mr. Fisher, in Volume 37 at page 7153, stated to the effect that the widening of the gap in relation to competitors as a result of transportation changes is of a paramount concern to the future of his industry. At pages 7171 and 7172, he succinctly indicated the relative status of his plant in relation to his competitors, when in reply to a question put by Commissioner Angus he said:

"If the price of steel goes up \$5 to our competitors, it goes up in the same way to us. But if the railway mark up 20%, our competitors may go up \$1, and we may go up \$1.25. So the gap becomes greater; and they are a lot nearer Sault Ste. Marie at Hamilton than we are down at Sackville. At the present time our steel costs us \$9.54 more than our competitors in Ontario purely on account of the freight. So, I say, looking ahead towards continued increases, it stretches that gap farther and farther."

He also said:

"I realize that we must have more revenue for freight, and for the increases for freight; but it is the method of making the increase, not on a percentage basis but on

a cents per hundred pounds, so that the gap does not get too great."

(See also Mr. Fisher's statement on page 7145 of Volume 37.)

Mr. A. R. French in his evidence, pointed up a fundamental difference so often overlooked when comparisons are made relating to the competitive position of small scale Maritime industries with their large scale counterparts in Central Canada at page 7184 of Volume 38, when he referred to the economies of scale of his competitors. Mr. French supported the evidence of Mr. Fisher when he said that freight rate increases should be cushioned, and that freight rate-wise the future was of considerable cause of concern to them. He indicated also that approximately 90% of the raw materials for his company came from Central Canada.

The difficulties confronting Maritime small-scale manufacturers in developing and retaining markets in the Central Provinces was also developed in the evidence of Mr. W. H. S. Schwartz, of W. H. Schwartz & Sons, Ltd., of Halifax, before the Board of Transport Commissioners in the 21% case. Excerpts from his evidence contained at pages 11109 and 11110 of Volume 768 of the Board's Transcript reads as follows:

"It is obvious that if rates are increased, with such handicaps as compared with our competitors in the Central Provinces, it will be impossible for us to continue manufacturing our products in Nova Scotia for shipment to Quebec and Ontario markets. We would then be obliged to build a plant in or near the City of Montreal to take care of this increasing business, and carry on only a small operation

in the City of Halifax for the trade in the Maritime Provinces. I would like to go further and say this: that if these freight rates should be increased, I think it would pay us to move our entire plant -- not only for the sake of the Quebec and Ontario business but also with respect to the Maritime business -- on Montreal."

"Q. You mean, from the point of view of profit; it would be impossible commercially?

"A. Yes, you could not continue.

"Q. From the point of view of sound business, is that correct?

"A. That's correct."

That evidence was given in 1947. Your Commission's attention is now directed to the sentence at page 79 of this Commission's brief which reads:

"(3) The increases effected on April 8th, 1948, influenced W. H. Schwartz & Sons Ltd., of Halifax, N. S., to establish a branch plant in Montreal, P.Q."

The impact on the iron and steel industry of horizontal percentage increases and other transportation changes since the Maritime Freight Rates Act became effective is very forcibly indicated in the evidence of Mr. L. A. Forsyth, President of the Dominion Steel and Coal Corporation, at pages 5501 to 5671, of Volume 29.

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From the economic and geographic approach, the principal objective of this Commission has been to place before your Commission information of a general nature to indicate the significance of adverse transportation changes on the Maritime shippers dependent upon long

haul transportation services to the markets of Central Canada. We have placed before the Commission statistical data to show the relatively adverse economic situation of the Maritime Provinces vis-a-vis Canada as a whole, in order to emphasize the necessity for the maintenance of freight rates as low as possible to facilitate as large a market as possible in the Central Provinces.

THE CHAIRMAN: Is there a proposal that the percentage be changed?

MR. SMITH: There is no submission on the part of the Transportation Commission of the Maritime Boards of Trade that the percentage be affected or that the provisions of the Act be extended.

THE CHAIRMAN: You must mean something. You say "the necessity for the maintenance of freight rates as low as possible to facilitate" --

MR. SMITH: I think if I may put it this way, that argument is directed to the question of horizontal increases. It is not directed to any submission that the 20% differential given by the Maritime Freight Rates Act be extended in any way.

THE CHAIRMAN: Then it is an argument against horizontal increases.

MR. SMITH: It is really an argument against horizontal increases showing the effect of them on the economy of the maritime provinces. I think that is the purpose of the submission.

THE CHAIRMAN: I see.

MR. SMITH: The Maritime Commission is not asking for an extension of the Act. There is some discussion of horizontal increases on page 17, my lord. I have already dealt at length with that question

and I do not think any useful purpose would be served now by my reading this and repeating the arguments which I have made, but these passages can be taken as read.

MR. EVANS: Will all of it go into the transcript?

MR. SMITH: The whole thing will go into the transcript. I am just trying to highlight it with the idea of giving the Commission some indication of the purpose of the submission.

The difficulty of establishing detriment in connection with a region in relation to transportation charges and economic and geographic factors was clearly set out in the judgment of Mr. Justice Douglas, in the decision of the Supreme Court of the United States in the case of the State of New York, State of Delaware, State of Indiana, et al, v. The United States of America, The Interstate Commerce Commission, et al, delivered on May 12, 1947, (331 U.S. 284) when he stated:

"The inquiry of the Commission into the effect of class rates on the economic development of Southern, Southwestern, and Western Trunk-Line territories took a wide range. It concluded that prejudice to the territories in question had been established. We think that finding is supported by substantial evidence.

"It is, of course, obvious that the causal connection between rate discrimination and territorial injury is not always susceptible of conclusive proof. The extent of that

causal relation cannot in any case be shown with mathematical exactness. It is a matter of inference from relevant data. The Commission recognized, for example, that the

fact that the South has fewer industries than the East results from a complex of causes - that the "industrial development of the East is due to many factors other than transportation services and costs, such as climate, soil, natural resources, available water power, supplies of natural gas and coal, and early settlements of population which antedated the building of the railroads." 262 I.C.C. page 619.

It noted that in 1939 freight revenues on commodities in the manufactures and miscellaneous group were but 5.3 per cent of the destination value of manufactured goods and that differences in freight charges resulting from differences in class rate levels were only a small fraction of that figure. But it nevertheless concluded that 'Nearness to markets and ability to ship to markets, on a basis fairly and reasonably related to the rates of competitors, are nevertheless potent factors in the location of a manufacturing plant. In fact, rate relations are more important to the manufacturer and shipper than the levels of the rates. 262 I.C.C. p. 619-620.'"

It is axiomatic that freight rates can be one form of trade barrier. Their effect is not only to impede the established industries but to prevent the establishment of new ones, to arrest the development of a territory to make it difficult for an agricultural region to evolve into an industrial one. The Maritime Freight Rates Act was an attempt to remove a barrier and restore the original purpose and intent of the Inter-colonial Railway, as interpreted by the rate structure

prior to 1912. It cannot be too strongly stressed that the lessening of the impact of the horizontal percentage increases are of paramount importance to Maritime industries, so that when rates are increased their competitive position, transportation-wise, is not aggravated or rendered nugatory.

VIII Competitive Position of More Distant Producers improved under conditions of prices rising more rapidly than horizontal percentage increases in freight rates.

(The inflationary concept of the C.P.R. in relation to freight rates.)

IX Horizontal Percentage Method of increasing freight rates to meet revenue needs or requirements only fair way.

Both witness Jefferson and McDougall in referring to pages 57 and 58 of Part 1 of the Canadian Pacific Railways' brief attempted to establish at pages 15356-15360 of Volume 76 and page 17971 of Volume 95 by an hypothetical illustration that during a period of rising prices the shipper in the extremities is generally in a better position competitively, even with the horizontal percentage increases. Later, on page 17998, Professor McDougall admitted that horizontal percentage increase in freight rates would tend to reduce the area over which a shipper could market. It is to be noted that the inflationary concept constitutes a broad generalization, and as Professor McDougall stated at page 18039 of Volume 95, "All generalizations are false."

The principal weakness in connection with the inflationary concept generalization is that it attempts to relate the improved position of the shippers at the extremities on the price factor only. Perhaps one of the best illustrations of the weakness of this

concept is the statement made by Mr. C. M. P. Fisher, at the bottom of page 7171 and the top of page 7172 of Volume 37, to which reference has already been made.

It will be remembered he said:

"If the price of steel goes up \$5 to Our competitors, it goes up in the same way to us. But if the railway mark up 20%, our competitors may go up \$1, and we may go up \$1.25. So the gap becomes greater;"

Along similar purport are statements by Mr. Colin MacKay, (a large lumber shipper and immediate past president of the Canadian Lumbermen's Association) at pages 4360, 4361 and 4363 to the effect that as competition becomes keener in Central Canada, the more important the freight rate becomes, because the lower the price of the product the greater is the freight burden, and that the more depressed a market becomes the severer effect it has on the economy of New Brunswick and Nova Scotia, where wood is basic to the economy. He further stated that anything that acts against lumber or the lumber industry "even if it is small, is a detriment to the country as a whole."

The inflationary concept fails also to take cognizance of the influence of competitive modes of transport in holding down the transportation costs of the short haul shipper and in providing services which lessen the need of distributors maintaining large inventories. Rates may be increased horizontally, but because of other modes of transport the short haul shipper's transportation costs may be less percentage-wise than the more distant shipper's. Witnesses for the potato industry and also Mr. Colin MacKay referred to the incidence of truck movements to the markets of

Central Canada from nearer sources of supply.

The Interstate Commerce Commission in its decision in Ex Parte Case No. 168 reported in 276 I.C.C. 9 said at pages 46 and 47:

"In a highly competitive economy, to which this country appears to be returning, differences in rates assume increasing importance to the commercial community, and it is not mere coincidence that the sharp uptrend in diversions from rail to highway occurs simultaneously with the conversion of our economy from a seller's to a buyer's market."

It is not without significance that a similar note was sounded by Mr. Fairweather, Vice-President of the Canadian National Railways, in his evidence at page 20218 of Volume 110, when he expressed fear that with the rate increases effected, and in prospect, the Railways may be pricing themselves out of the market, having regard to increasing highway competition. Reference was also made to Mr. Gordon's statement where the same fear was expressed.

Attention is also directed to statements by Mr. Fairweather pertaining to the fact that basic commodities historically have always enjoyed low rates, and the prospect of increasing the rates "beyond the levels that are now in contemplation -- is looked upon with a certain degree of reservation." It is submitted that even with the increases now applied to the basic and primary commodities the competitive position of the Maritimes in these commodities has been seriously worsened.

In any event the position taken by Mr. Fairweather coincides with that taken by this Commission

at page 72 of its brief when it was stated -

"The loss in revenue resulting from the diversion of high-class traffic to other transport media and the reductions in rates concomitant with more costly services and facilities in order to retain the traffic brought about a situation in which the burden for meeting the revenue needs of the Railways tends to be shifted more to basic and long-haul traffic, basic and primary commodities, and in general, persons and industries dependent upon long hauls in Canada that are generally less capable of absorbing the additional load.

The proposals of the Railways in both the 21% and 20% cases to increase the rates in all commodities except in the case of coal and coke and as otherwise excepted, by uniform percentage increases, are indicative of shifting the rate burden."

It is of interest also that in 1932 the Duff Commission said (page 55):

"If the railways lose a large part of their profitable short distance traffic to the roads a readjustment of the whole freight rate structure may be necessary, with a possible increase in the rates charged for the long distance and heavy freight traffic."

Mr. A. R. French in his evidence at page 7187 of Volume 38 made specific reference to the economies of scale enjoyed by the competitors of his company. Horizontal percentage increases tend to bear more heavily on the small scale producers compared with his larger scale competitors. It is of interest that

Professor Mackintosh referred to the disadvantages of the small scale of Maritime industries in his study for the Sirois Commission at page 89 as follows:

"Though it is difficult to reach a precise conclusion, improved transportation appears to have been more successful in opening the Maritime market to Central Canada than in opening the Ontario and Quebec markets to the Maritime Provinces. Exposed to competition from Central Canada and the West, Maritime agriculture contracted and sought refuge in more specialized products."

This is what Mr. Matheson wants to emphasize.

"Increasing centralization and the enlarging scale of manufacture have handicapped Maritime Manufacturers with their small local market."

For those industries, such as the coal and steel industries, which have large markets in Central Canada, it is significant that the largest part of their market is highly competitive and marginal."

COMMISSIONER ANGUS: Are you suggesting some alternative means of producing railway revenue because Mr. Fairweather spoke of this tendency as if it were inevitable?

MR. SMITH: Of course the railways have to have the revenue. There would have to be a shifting from the low and long haul to the higher class and shorter haul in so far as it is possible. There is the difficulty of competition. That is what Mr. Fairweather recognized, I assume, or was referring to.

COMMISSIONER ANGUS: And if we were to advise against horizontal increases, what source of revenue would you point to as an alternative to them?

MR. SMITH: That is a matter for study, and as I have gone into that matter pretty extensively in my original argument I do not want to repeat my argument. What I said was that it is a matter for study and continuous study, and the question of the distribution of the freight rate burden has to be looked into. Mr. Matheson in his brief is suggesting some amendments to the Railway Act.

(Page 22614 follows)

The inflationary concept as submitted by the Canadian Pacific Railway Co. in justification for the horizontal percentage method of increasing rates has not proven that either relatively or competitive-wise the position of the Maritime Provinces has been improved. On the contrary, it has been indicated that the basic horizontal percentage method of increasing rates in Canada, the influences of increased diversions to motor trucks and its associated effects on the marketing pattern, all contribute in increasing the difficulties of the producers in the Maritimes dependent on long hauls by rail to the markets in the Central Provinces vis-a-vis the larger producers more favourably located to the larger markets.

NATIONAL TRANSPORTATION POLICY

The basic objective of a Canadian transportation policy, as implied at pages 131 and 132 of this Commission's Brief, should be the provision and continuance of adequate transportation facilities commensurate with the requirements of Canada as a whole for low cost and efficient transportation, and with due allowance for the national defence.

My Commission has nothing further to add to what is contained in its Brief.

THE REGULATION OF RATES UNDER THE RAILWAY ACT, WITH REGULATIONS AND PROPOSED AMENDMENTS

These matters which are referred to here are not matters of very great moment. They relate to questions, I think, which have come up in Mr. Matheson's practice. Perhaps better to illustrate what he has in

mind it would be necessary to read what he says.

This Commission has amendments to submit in connection with only two sections of the Railway Act, i.e., Sections 312 and 325. In addition, other matters relating to the Railway Act will be discussed briefly to indicate the position of this Commission thereon.

The proposals for Section 312 are in connection with express charges and this was in the original brief. The proposal to amend Section 312 stems principally from the fact that:-

- (1) The Board has laid down that under the Section as it now reads it has not any power to direct an express company qua express company to install facilities or to arrange that specific service shall be given at specific stations.

THE CHAIRMAN: Where is the amendment?

MR. SMITH: The amendment is on the next page, and the amendment is intended to give the Board of Transport Commissioners power to direct an express company to install facilities or to direct -- perhaps I will read the two passages and then come to the amendment.

THE CHAIRMAN: That is the first point that they have no - -

MR. SMITH: No power to install facilities, to direct an express company to install facilities, and the cases referred to of Re Express Tolls, 26 C.R.C., 32, also J.O.R. & R. p. 29). (1920).

- (2) Even though charges for cartage services which a railway company itself perform fall within the meaning of sub-section 32

of Section 2, the Board has ruled that the practice of advancing the cartage charges of a recognized cartage company from shipper's premises to the railway at shipping point, for collection from consignees, is not a railway service or facility within the meaning of the Railway Act, and that the Board has no jurisdiction over cartage companies and is without power to regulate the charges made by them.

I think what is meant there is that if the railway picks up by means of its own truck or some cartage company's truck, goods for shipment and carries it to the place of shipment, it advances the charges for the purpose and then collects from the consignee.

Now, Mr. Matheson's amendments are directed to these two points. He says that the amendments to Section 312 are intended to give the Board of Transport Commissioners the power to direct an express company to install facilities or to arrange that specific service shall be given at specific stations, and also to provide the machinery for the regulation of tolls and services of motor vehicles used by^a/railway company in conjunction with its rail operations.

Now, these are rather technical matters and I don't wish to take up too much of the time of the Commission on these amendments. The recommended amendments to Section 312 are as follows:-

SECTION 312

Under the heading "Traffic, Tolls and Tariffs - - Accommodation for Traffic" -- change in the first

"line of Section 312 the words reading 'The Company shall, according to its powers,' to read 'The railway or express company shall, according to its powers,'

In Sub-sections (a), (b), and (d) of Section 312 change the word 'accommodation' to read 'transportation facilities'.

Add a new sub-section (f) to Section 312, sub-section 1 to read as follows: '(f) The term 'transportation facilities' as used in this part shall include locomotives, cars, and other vehicles - including motor vehicles, vessels and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, expressed or implied, for the use thereof, and all service in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported."

If other sections of the Railway Act require to be amended so as to leave no doubt in connection with the purpose and intent of the proposed amendments to Section 312 it is so recommended.

THE CHAIRMAN: That means a change in the definition of the word 'company', doesn't it?

MR. SMITH: That is right, my lord.

THE CHAIRMAN: "Company" so far. - -

MR. SMITH: "The Company" means, I think, "railway company".

THE CHAIRMAN: Yes, it says that. Well then, this is an amendment to the extent of amending the word "company" for the purposes of this section to "express company".

MR. SMITH: That is right, my lord, and the second amendment is amplifying the word "accommodation"

to cover transportation facilities, to include services in connection with the receipt , delivery, storage and handling of property transferred. I think that is the short way. I think that section is taken from the Interstate Commerce Act.

THE CHAIRMAN: Which section is taken?

MR. SMITH: The latter one, my lord, that definition.

THE CHAIRMAN: That is the new sub-section (f)?

MR. SMITH: Sub-section (f). It is taken from Section 1, sub-section 3a of the Interstate Commerce Act, and it is adapted from that section: "The term 'transportation' shall include so and so".

THE CHAIRMAN: Pardon me, it is transportation facilities?

MR. SMITH: Transportation facilities, yes.

THE CHAIRMAN: Now then, is that term used in the previous paragraphs (a) (b) (c) (d) and (e)?

MR. SMITH: No, my lord, it is not. It is the word "accommodation" that is used, I think.

THE CHAIRMAN: It says: "the term 'transportation facilities' as used in this part.....", but then that term is not used in that part.

MR. SMITH: Yes, it is: "in sub-sections (a), (b) and (d) of section 312 change the word 'accommodation' to read 'transportation facilities'".

THE CHAIRMAN: That would be another amendment. Yes, I see, in the line above.

MR. SMITH: The line above, my lord.

THE CHAIRMAN: The word "accommodation" is to be changed to "transportation facilities".

MR. SMITH: Such adequate and suitable transportation facilities.

THE CHAIRMAN: "Shall establish adequate and

"suitable transportation facilities for the receiving and loading" instead of "accommodation". "Furnish and use all proper appliances, transportation facilities and means necessary for receiving, loading, carrying, unloading and delivering such traffic." Well, you delete the word "accommodation" and alter the section by changing "accommodation" to "transportation facilities". What do you want done?

MR. SMITH: Well, "including motor vehicles" is the important part there, I think, that "other vehicles" shall include locomotives, cars, and other vehicles" including motor vehicles. Then he says: "and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract".

THE CHAIRMAN: Would you compel the express companies then --

MR. SMITH: This would be the cartage company.

THE CHAIRMAN: The railways?

MR. SMITH: I think there might be some constitutional question, without having looked too closely into it, as to whether ---

THE CHAIRMAN: Well, would it compel the railway companies to provide truck services to consignees.

MR. SMITH: That is right.

THE CHAIRMAN: To shippers, perhaps. That is what you would do?

MR. SMITH: That is right, that is the purpose.

THE CHAIRMAN: Do I understand you to have said that the Board itself has no power to do that now?

MR. SMITH: Yes, my lord. There is a ruling in 25 J.O.R. & R. of the Board at page 53.

THE CHAIRMAN: What year was that?

MR. SMITH: 1935, my lord.

THE CHAIRMAN: What do they say there in short?

MR. SMITH: It is headed:-

"Re Cartage Charges at Shipping Points
Advanced by Railways for Collection from
Consignees.

"The practice of the railways of advancing the cartage charges of a recognized cartage company from shipper's premises to the railway at shipping point, for collection from consignees, has been referred to in the following judgments of the Board" (which are listed).

"The Board has ruled that this cartage service is not a railway service or facility within the meaning of the Railway Act; and that the Board has no jurisdiction over cartage companies and is without power to regulate the charges made by them."

THE CHAIRMAN: I see it refers to sums paid by the railway to the cartage company?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Well, of course, the cartage company would not come under this Act?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: I understand you wish to provide for the future, that the railway itself shall provide cartage facilities?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Is that so?

MR. SMITH: Yes, my lord. They will provide cartage facilities whether they do it with their own trucks or by means of independent contractors, and that in any event they will be responsible for the service. I think that is the object, and that it will be considered as a

service provided - -

THE CHAIRMAN: At whose responsibility?

MR. SMITH: Well, they pay it in the first instance, and then collect it from the shipper.

THE CHAIRMAN: That is what they are doing now?

MR. SMITH: That is what they are doing now.

THE CHAIRMAN: What change do you wish to make in it?

MR. SMITH: No change in that, my lord.

In the matter of amending Section 320 -

This Commission now withdraws its proposal to amend Section 320 by deleting the words "whether such object cannot be attained without unduly reducing the higher tolls".

Re proposed amendments to Section 325 -

These were discussed when I was speaking on behalf of the Province and I do not think it is necessary to repeat the arguments which I have already made.

The proposed amendment to Section 325 by the addition thereto of Sub-section 5(b), (and which involves changing Sub-section 5 to read "Sub-section 5(a)") is to give effect to the recommendations contained in the Brief of this Commission, (See pages 74-78, 80, 81, 96, 97 and 122; and also Volume 19, pages 3608, 3609; Volume 20, pages 3849-3851, 3855, 3916; Volume 23, pages 4406, 4411, and 4425-4433.), that the Board of Transport Commissioners should be vested with wider supervisory powers, making it mandatory for it to give consideration, in connection with any rate adjustments, to:

(a) establishing rates for the development of the natural basic products and associated enterprises;

(b) investigating and determining the incidence of

Railway charges on production costs;

(c) the conditions which at any time prevail in industry to the end that commodities may move freely;

(d) the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed;

(e) the rate relationships under which industries have been established and developed;

(f) the incidence of increases in worsening regions economically;

(g) the effects of rate changes in disrupting the relationships in rates that existed before 1938 between Canadian Ocean ports. (See page 15, reference 19, of this Commission's Brief.)

While, under the Railway Act, the Board possesses sweeping powers, it is contended that the Board has become circumscribed in giving effect to those powers by principles which it has established and repeatedly enunciated; consequently, the departure from such principles when and where found desirable, could be more easily effected by expressed stipulation in the Railway Act: the proposed amendment to that end reads as follows:-

Section 325.

Amend Section 325, sub-section 5, by making the present provisions of said sub-section as clause (a) of the sub-section and by adding new clauses (b), (c) and (d), to read:

"(b) Notwithstanding anything contained in this Act the Board in the exercise of its powers to fix, determine and enforce just and reasonable rates shall give due consideration, among other things, to the

effect of rates on the movement of traffic by the company for which the rates are fixed and determined, to the effect of rates in disturbing rate relations, and to the necessity for the maintenance in the interest of the public of adequate and efficient railway transportation service at the lowest cost consistent with the provision of such service;

(c) The Board shall, upon the application by or on behalf of any party interested, or may of its own motion, for the purpose of considering the effect of rates in disturbing rate relations, inquire into the incidence of all or any rates fixed, determined or enforced since the 7th day of April, 1948 and shall change and alter such rates in such manner and to such extent as it may consider necessary or expedient in order to restore rate relations which it may find to have been unduly disturbed;

(d) Notwithstanding anything contained in this Act the Board in the exercise of its said powers shall give due consideration, among other things, to the effect of changes in export and import rates in disrupting the relationships between Canadian ocean ports and the Board shall, upon the application of any party interested, or may of its own motion, inquire into the incidence of all or any export or import rates fixed or determined since the 27th day of March, 1938,

and shall change and alter such rates in such manner and to such extent as it may consider necessary or expedient in order to restore the relationships which it may find to have been disturbed."

One of the principle objectives of the suggested amendment to Section 325 is to facilitate the prescription of exceptions to basic horizontal percentage increases in order to lessen the impact of that type of increase on basic and primary commodities, including foodstuffs and so-called long-haul traffic. Argument for exceptions to basic horizontal percentage increases will be developed in detail by Counsel for the Maritime Provinces with whom this Commission collaborated.

The various clauses of the proposed amendment (excepting the one pertaining to export and import rates) follow mostly the pattern of changes and directions to the Interstate Commerce Commission to cope with rate regulatory problems in that country, which, it is submitted, are, on principles, comparable with Canada.

The clause reading -

"to the effect of rates on the movement of traffic by the company for which the rates are fixed and determined"

is paraphrased from Section 15(a) of the Interstate Commerce Act.

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THE CHAIRMAN: You inserted a few words;
Just what were they again?

MR. SMITH: I would have to look that up.

THE CHAIRMAN: You proposed the insertion of a phrase somewhere along here?

MR. SMITH: In which connection?

THE CHAIRMAN: In connection with 325. I haven't got that down.

MR. SMITH: Well, 325 is:- "Notwithstanding anything contained in this Act, the Board in the exercise of its powers.....", you will remember that I suggested that Section 325 be amended?

THE CHAIRMAN: Yes, now, what is the amendment you suggest?

MR. SMITH: The amendment is as you will see at the bottom of page 25, my lord.

THE CHAIRMAN: This is the same as your amendment?

MR. SMITH: It is the same as my amendment, yes.

"Notwithstanding anything contained in this Act, the Board in the exercise of its powers to fix, determine and enforce just and reasonable rates shall give due consideration, among other things, to the effect of rates on the movement of traffic by the Company for which the rates are fixed and determined."

THE CHAIRMAN: I think there was an alteration made.

MR. SMITH: You said then: "the effect of rate changes".

THE CHAIRMAN: Rate changes?

MR. SMITH: I think "to the effect of rate changes", in the first line.

THE CHAIRMAN: In disturbing rate relations, yes.

MR. SMITH: In disturbing rate relations, the necessity for the Board, that is the same, and I think, "effect of rate changes" in (c) in the third line, I think it was made there.

MR. EVANS: The copy I have shows these amendments as being proposed by Nova Scotia, New Brunswick and Prince Edward Island, and I don't know whether Mr. Smith is now abandoning the one he put in the other day.

MR. SMITH: Which one is that?

MR. EVANS: This is 325 and it does not correspond with the one you put in the other day. The copy I got indicates that all the Maritime Provinces are supporting it. I have great difficulty in determining which Maritime Province supports which amendment, that is my difficulty.

MR. SMITH: I am not speaking for the other Maritime Provinces, Mr. Evans, but as I understand it Mr. Matheson adopts the one I put in the other day.

I do not intend to discuss this question of horizontal increases any further or these proposed amendments, except the last one mentioned.

THE CHAIRMAN: Were these proposed amendments taken from some United States Statute?

MR. SMITH: Partly.

THE CHAIRMAN: You say, among other things, that the Board shall change rates to such an extent as it may consider necessary?

MR. SMITH: That is not taken from the Act.

THE CHAIRMAN: You cannot tell the Board that they shall do something that they may want to do - -

MR. SMITH: Shall change and alter and inquire into the terms.

THE CHAIRMAN: That can be rectified of course?

MR. SMITH: Yes, that can be made a change there, shall change if they consider it, I suppose.

THE CHAIRMAN: Which may prove to be necessary.

MR. SMITH: Yes, which may prove to be necessary, which they find to have been unduly disturbed.

THE CHAIRMAN: Now, are you telling us that Nova Scotia as well as this particular Transportation Commission agree to these particular amendments?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: Is that so?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: You are not speaking for the other Maritime Provinces?

MR. SMITH: No, they will speak for themselves.

MR. EVANS: Which amendment, Mr. Smith? I am having difficulty. Are you speaking of this one you put in the other day for Nova Scotia?

MR. SMITH: Yes.

MR. EVANS: And this one can be taken as eliminated?

MR. SMITH: Can be, I think.

MR. EVANS: What about 320?

MR. SMITH: 320 is out. There is one amendment there, that is the one (d), my lord, that I spoke to, that I mentioned in passing so to speak, that is the one on export and import rates. Now, that matter was discussed in my discussion on Friday and I said that I would speak to it when I came to discuss this Brief.

THE CHAIRMAN: Yes, but I am wondering whether you are really saying that the Board shall do anything that affects anybody in particular. "Notwithstanding anything contained in this Act, the Board in the exercise of its powers shall give due consideration...."

MR. SMITH: Yes.

THE CHAIRMAN: "...among other things, to the effect of changes in export and import rates in disrupting the relationships between Canadian ocean ports and the Board shall, upon the application of any party interested, or may of its own motion, inquire into the incidence of all or any export or import rates fixed or determined since the 27th day of March, 1938, and shall change and alter such rates in such manner and to such extent as it may consider necessary or expedient in order to restore the relationships which it may find to have been disturbed." Well then, suppose they find there is a disturbance, do you mean to say then that they shall restore the condition that existed before - -

MR. SMITH: I think it would be preferable if we used the word "may" there rather than "shall" because I can quite appreciate - -

THE CHAIRMAN: Cannot the Board do all these things now? It is a matter of giving consideration to them.

MR. SMITH: I think they can, that is my view. As to whether this is a statutory directive, so to speak, to them to consider those matters - -

THE CHAIRMAN: Yes, that is what it is, but I mean, is it necessary?

MR. SMITH: I don't think it is necessary. They can do it, but this is a sort of statutory order that they should do it. Now, that is all I can say, my lord.

COMMISSIONER INNIS: They can but they won't.

MR SMITH: They can but they won't, that is right. Now, this matter was---

THE CHAIRMAN: Well, on previous occasions have they not listened to argument about these things?

MR SMITH: I do not know if the matter has been discussed. It has been discussed before Commissions like the Sirois Commission, but I do not know if it has ever been the subject matter of an application, except there was -- I do not think the question of any such port relationship has ever been brought before the Board, but it was discussed.

THE CHAIRMAN: This does not make it clear to me whether, if the Board do make this investigation, they are to be expected then to order a restoration of previous relationships; or are they to be at liberty to say, "Yes, we find there is a disturbance, but we think the disturbance should continue"?

MR SMITH: I think possibly it would be better --
" . . . may consider necessary or expedient to determine the relationship which it may find to have been disturbed."

Looking it over, it goes too far, because, as you point out, it may be that the Board may find, owing to the relationship which exists between American and Canadian ports, that it is not expedient that it should be restored. I think that the matter should be left open. There should not necessarily be a statutory directive to them that they would have to restore these relations. I think what Mr. Matheson must have had in mind was that it is a matter that should be inquired into, and if it is found that the rate relationship between the Maritime ports and the Quebec ports can be restored, they should then restore it; but perhaps the last sentence

goes too far.

THE CHAIRMAN: Then you refer in paragraph (d) to export and import rates.

MR SMITH: Yes, my lord.

THE CHAIRMAN: Export rates -- I suppose you mean export railway rates?

MR SMITH: Yes, my lord. I discussed that, you may remember---

THE CHAIRMAN: And by import rates you mean rates from Halifax up into Canada

MR SMITH: Yes, on goods that arrive from foreign countries.

THE CHAIRMAN: You do not mean the rates on the steamers coming in?

MR SMITH: No; that was discussed, as you will recall, on Friday.

THE CHAIRMAN: Rates from the ports inland.

MR SMITH: Yes, my lord.

THE CHAIRMAN: You want to make sure, then, that the Board, when they have before them a proposal to change and alter rates, are to consider all these things.

MR SMITH: Yes, my lord.

THE CHAIRMAN: All right.

MR SMITH: Now I think I can skip some of the following pages, my lord.

THE CHAIRMAN: Are there any other amendments proposed?

MR SMITH: Yes, a little later on. There are no further amendments to the Railway Act, but he has some further amendments. I am jumping now to page 40.

(Recess)

(Pages taken as read follow commencing on next page)

A provision similar to the clause pertaining to rate relationships was discussed on pages 4426-4431 of Volume 23 of the Transcript.

The position taken by the Board of Transport Commissioners with respect to the maintenance of rate relationships is indicated in the following passages from the Board's judgment in the application for particulars in the 21% case. (60 C.R.T.C. 241, 1947, at pages 248 and 249.)

" . . . the present application of the Railways must not be confused with complaints as to regional and territorial irregularities or discriminations and questions of rate relationship, and so on" -

also -

" . . . the Board's position in this matter should be made perfectly clear: (1), by refusing to consider regional and territorial irregularities or discriminations and questions of rate relationships on this application."

In the final judgment in that case the Board refused to take into consideration the maintenance of rate relationships. (See pages 44, 45-65 and the decisions reported in Volume XXXVIII, No. (1) (a), J.O.R. & R., 1948.) In contrast, the weight given to maintenance of rate relationships or the lessening of the incidence of general increases in relation thereto in the United States is clearly demonstrated in Appendix 1(b) of Exhibit 47, and also pages 443, 444 and 453 of Ex Parte Case No. 166, as reported in 270 I.C.C., 1948.

Your Commission's attention is directed to the Hoch-Smith Resolution of the United States, which became effective on January 10, 1928, and is found in C. 120 43 Stat. U.S. p. 801, which in part reads

as follows:

"That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move."

Incidentally, the Interstate Commerce Commission with reference to the Hoch-Smith Resolution and the Rule of Rate-Making, Section 15(a) of the Interstate Commerce Act, has stated:

"Shippers have constantly manifested a desire to reach out farther and farther into distant markets. Congress has recognized the importance of this factor in the rule of rate-making, section 15a, as well as in the Hoch-Smith Resolution. In no other country has there been such a degree of freedom of movement of commodities over great distances. Failure to recognize these characteristics in shaping the form, contour, and substance of rate structures would be destructive of the interests of all concerned. - - We have recognized and - - preserved the historic spirit and purpose of rates and rate structures. We have seen how dependent the shippers of many sections in our national economy are on the maintenance of rate structures in whose formulation value-of-service considerations have played so large a part."

Incidentally, the Board of Transport Commissioners said almost the same thing at pages 43 and 44, 38 J.O.R. & R. 1(a), when they commented upon the peculiar situation of the Maritimes as follows:

"For the Maritime Provinces it is essential that they continue to find, to a considerable degree, markets for their primary products, as well as their manufactured products, in the more densely populated areas of the Provinces of Quebec and Ontario, where competition is keen. The number of manufacturing industries in New Brunswick and Nova Scotia is not large, but they are of much importance to the areas concerned. In spite of the distance from the markets to be found in the large centres they have, with, perhaps, one or two exceptions, managed to overcome largely their geographical disadvantage and make progress. For these industries concern is expressed lest they be put at a disadvantage with their competitors, in the event that a horizontal increase in freight rates such as applied for is allowed."

Yet, despite the recognition of the need to the Maritimes of the markets of the more densely populated sections of Canada no allowance was made to that end in the final order.

The last part of clause (a) reading:

"to the necessity for the maintenance in the interest of the public of adequate and efficient railway transportation service at the lowest cost consistent with the provision of such service;"

is an adaptation of part of Section 15a of the Interstate

Commerce Act. Since the need of adequate and efficient transportation services at the lowest cost consistent with the provision of such services is a basic objective, no further comment is necessary.

The changes, which have taken place in relation to the export and import rate structure to and from Maritime ports, that have upset rate relationships with the St. Lawrence River ports, dictate the incorporation of the proposed clause (d) to subsection 5 of Section 325. This proposal is associated with national policy as set out in several statutes pertaining to railroads in Canada. (See pages 15-16 of the brief of this Commission, footnote references Nos. 19 and 20.)

It cannot be stressed too strongly that with the strip-like economy of Canada, obligations inherent in the construction of the Intercolonial Railway, and the necessity of the development and continuance of markets, for Maritime industries, particularly in the adjacent Central Provinces, in relation to the less arbitrary markets of the Eastern United States, require special consideration. Consideration has been given to somewhat similar marketing conditions in the United States by the United States Regulatory authority, although in that country in the absence of a comparable strip-like economy as in Canada, the problem is not as complex.

Other Matters in Relation to Freight Rates
and the Railway Act

(1) Competitive Rates

The position of this Commission in regard to competitive rates is set forth at page 122 of the brief and pages 3906-3914 of Volume 20 of the Transcript. It is the considered view of this Commission that the

Board under Sections 34 and 332 of the Railway Act, as presently in effect, could invoke such checks and controls over competitive rates as might be necessary to determine conditions justifying the establishment of such competitive rates. Consequently no amendment to the Sections pertaining to competitive rates is suggested by this Commission, if it appears to your Commission that under the present statute reasonable surveillance can be maintained over competitive rates.

(2)

International Rates

The stand taken by this Commission in connection with international rates is set out at pages 88-94 of the brief, and discussed at page 3896 of Volume 20 and pages 4565-4569 of Volume 24. It is conceded by this Commission that the maintenance of joint through international rates are of importance in connection with the Export and Import trade between Canada and the United States. However, it is believed that some form of an international regulatory body should be constituted, or at least some machinery established and set in motion to enable greater liaison between the Board of Transport Commissioners and the Interstate Commerce Commission, for the purpose of conferring on international rate questions, involving the reasonableness of joint through rates between Canada and the United States and other matters relating thereto. It is appreciated that there are problems related to international rates, but it is believed that they are not insolvable. In Exhibit 47 of this Commission's brief, Appendix 79, there are set out illustrations indicating that lower combinations exist over a large number of class rates between Maritime originating points and United States destinations. The

rates contained in Appendix 79, if adjusted for changes since the brief was presented, will reflect the same situation.

Both in Canada and the United States the railway regulatory bodies have held that joint through rates higher than the combinations are prima facie unreasonable. In United States general revenue cases, particularly since 1946, interterritorial rates have been subject to lower basic increases than in the higher rated territories, in order to reflect the lower basic increases authorized in lower rated territories. - Ex Parte 162, Case 266 I.C.C. 537; Ex Parte 166, Case 270 I.C.C. 403; Ex Parte 168, 276 I.C.C. page 9.)

There are also cases where the Interstate Commerce Commission prescribed different schemes of rates between different territories to reflect the conditions and circumstances obtaining in those territories. Illustrations of such action by the Interstate Commerce Commission are found in the following cases:

Refined Petroleum Products in the Southwest -

171 I.C.C. 381 (1931;)

Southern Sand and Gravel Case - 140 I.C.C. 85 (1928;)

The Southern Cement Case - 132 I.C.C. 427, (1927)

It is customary also for the Interstate Commerce Commission in authorizing interterritorial rates to order such arrangements as might be necessary to clear border points so that rates from points in the lower rated territory to points in the higher rated territory are not lower than intermediate points. Another established principle in setting up rate scales provides for the shortest route by which traffic can be handled without transfer of lading. For example,

taking the rates on pulpwood from New Brunswick to Maine points and assuming that both New Brunswick and Maine are lower rated and higher rated territories respectively in the United States, the rate on pulpwood from Woodstock, N.B., to Rumford, Me., would not be lower than from Houlton, Me., to the same destination in the absence of compelling competition but would reflect the rate bases of both territories, adjusted where necessary so that the rate from Woodstock would not be any lower than the rate from Houlton, Me., to the same destination. In other words, the interterritorial rates would clear the border and moreover be related in so far as possible to the shortest route by which traffic can be handled without transfer of lading. (This refers to illustration in the Canadian Pacific's statement at page 14367 of Volume 70.)

Incidentally, early in the history of the Board of Transport Commissioners it stated to the effect that customs duties were not factors to be considered by the Board in fixing just and reasonable rates. In this connection the Board in the case of Canadian Oil Companies v. Grand Trunk, Canadian Pacific and Canadian Northern Railways (1911), 12 C.R.C. 350 at 357 said:

"As I read the Railway Act, it does not fall within the scope of the Board's powers to reduce a rate because a removal of customs duty has created a keen competition. If the removal of a duty creates the situation complained of, it is to another body that application must be made for relief."

While the Interstate Commerce Commission has authorized increases in international rates between Canada and the United States to the same extent and in

the same manner as authorized in the United States, the authorization is only within the limits of the Interstate Commerce Commission's jurisdiction. In the so-called Carstens Case, or Carstens Packing Co. v. The Great Northern Railway Company et al, as reported in 264, I.C.C. 164 (1945), the Interstate Commerce Commission points out in connection with Joint International rates that:

"We have jurisdiction to determine the lawfulness of the joint rates applied, irrespective of whether or not the local rates, as such, were published and maintained for transportation within the United States to the Canadian border.

"It is well settled that the Commission does not have authority to prescribe through international rates for the future or to require United States carriers to participate in such rates. But when carriers subject to our jurisdiction voluntarily join in joint rates between points in Canada and points in the United States they subject themselves to liability as joint tort feorsors for any damage to shippers by reason of the unlawfulness of such rates, and we may require the United States carriers to abstain from joining in the maintenance of such rates on any higher basis than that which we find reasonable."

It is of interest to note that in this case the Interstate Commerce Commission found rates on shipments between Canada and the United States unreasonable to the extent that they exceeded the lowest combination of (1) the rate of the Canadian carriers from the point of origin to the international border; and (2) the rate of the United

States carriers from the international border to destination.

There are numerous instances in which combinations of local rates over border points between the Maritimes and stations in Central Freight Association territory exceed the joint through rates. (See Exhibit 47 - Appendix 79, and statement by Witness Jefferson at page 16510, Volume 84.)

This Commission has no recommendation to make as to the type of international organization or liaison arrangement for control over international rates. However, it is believed that there exists a need at least for greater liaison between the regulatory bodies in Canada and the United States than would appear to exist.

Equalization

This Commission has not advanced nor does it subscribe to or support any proposal of so-called equalization of freight rates. It is the belief of this Commission that so-called rate equalization is impossible of achievement. Proposed equalization is particularly objectionable to this Commission, inasmuch as it would set in operation the same process which took place in connection with the Maritime freight rate structure between 1912 and 1925, and which was strongly deplored by the Sirois Commission. (See page 21, this Commission's brief.)

This Commission is also strongly opposed to the proposed amendment to Section 3, Subsection 2(c) of the Maritime Freight Rates Act as submitted by the Canadian Pacific Railways, (see page 16589 of Volume 85), for reasons as clearly set forth above.

Arbitraries

The historical background of arbitraries as

they relate to interterritorial rates between the Maritimes and Central Canada, including references to decisions of the Board of Transport Commissioners thereon, is found at pages 55-61 of this Commission's brief. The proposal to maintain the class rate arbitraries in effect as of April 7, 1948, was discussed at pages 73, 74, 84 and 85 of the brief, and Volume 19, pages 3487, 3510, 3611; Volume 20, page 3865; Volume 24, pages 4550, 4556, 4592; Volume 37, page 7146; Volume 39, pages 7367-7371. Arbitraries constitute an important part of the Maritime rate structure. This fact has been repeatedly emphasized in decisions of the Board of Transport Commissioners. (See 6 J.O.R. & R. 131; 12 J.O.R. & R. 66; 22 C.R.C. 398). Also note 29 C.R.C. 238 - Crows Nest Rates Case - where this statement is found at page 250:

"Between the Maritime Provinces and Western Canada, the published through rates are built up on arbitraries or additions to the normal Montreal rate, and by reason of the much greater distance the Maritime shipper is, under ordinary conditions, naturally at some disadvantage in the matter of freight rates as compared with Ontario."

While no recommendation is being made to provide for the maintenance of arbitraries in amendments either to the Maritime Freight Rates Act or the Railway Act, this Commission strongly commends the maintenance of the arbitraries as existed over Montreal on April 7, 1948, as a simple and effective method of lessening the impact of percentage increases in interterritorial rates.

(5)

Reparations

This Commission has nothing further to add to the proposal regarding reparations, as referred to at page 134 of the brief and page 3764 of Volume 20 of the Transcript.

(6)

Groupings

This Commission submits that the rate groupings and zonings in the Maritimes, inherent in the Maritime rate structure on eastbound movements, and in relation to the Maritime Freight Rates Act on westbound movements, may justify a review in connection with some points under changed conditions and circumstances, but this Commission has no recommendation to make regarding amendments to any Act, as it is believed that it may yet be possible to effect re-groupings, where justifiable, without instituting a change to that end in the Maritime Freight Rates Act. Incidentally, the Maritime Freight Rates Act will be tested shortly in connection with the establishment of one zone on Prince Edward Island for certain rates. If the Maritime Freight Rates Act proves restrictive in connection with that quest, an amendment then might have to be sought to facilitate justifiable regroupings under the Act. (See brief, pages 97 to 102, and Volume 20, pages 3882, 3883, 3886; Volume 24, pages 4586 and 4587.)

(7)

Segregation of Passenger and Freight Expenses

This Commission has placed itself on record as in favour of the segregation of passenger and freight expenses (brief, page 128; Transcript, Volume 20, page 3747; Volume 23, page 4414.) It is convinced that it would be to the interest of the Railways that segregation between passenger and freight expense be

established, as by this means a determination could be made of the exact amount by which the passenger service is not covering fully distributed costs. Incidentally, the Interstate Commerce Commission has prescribed under their uniform accounting rules an apportionment of the freight and passenger revenue and expenses of the individual roads.

The Interstate Commerce Commission on numerous occasions has commented upon the passenger data and has declined to accede to propositions made to it that they cannot authorize an increase in freight rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden.

The Interstate Commerce Commission has also taken the stand that it would be erroneous to assume that the operating deficit in the passenger service has been attributable solely to the loss of passengers to private automobiles and other competing form of transportation. In this connection, the Interstate Commerce Commission recently referred to the other traffic borne by passenger trains, such as baggage, mail, express and milk, and they have concluded that much of the burden of the passenger service deficits "is apparently quite unrelated to the carriage of passengers with perhaps some qualification for baggage." (276 I.C.C. 9, p. 39, 1948.) It is submitted that a breakdown between passenger train and freight revenue and expenses will depict a clearer picture in assessing what weight should be given to the passenger train service in relation to revenue needs and if it appears that the social factor attributable to passenger train services necessitate some financial allowances to cover the

carriage of mail, etc., the data for that purpose will be readily available.

(8) Standard Rates

During the course of the hearings a number of references have been made to standard rates. For example, at page 15833, Volume 79, a statement was made (apparently referring to standard rates), -

"in this country we get a previous approval before the rate becomes effective and it is prima facie reasonable."

Again, at page 16248 of Volume 82, the statement is made:

"I do not know that I understand you correctly, but in what you call the absolute standard I assume you are referring to the standard rates or the maximum rates. That is the prima facie level of reasonableness for individual rates, so that there can be, by tests that are applied all the time, findings by the Board that, in the light of certain other things that have taken place, a particular rate for a particular individual is unreasonably high, even though it is not up to the standard. That has been done."

And at page 16558, Volume 84, it is contended by Witness Jefferson that the onus is on the complainant to show why a rate is not just and reasonable. The Board's position in connection with the filing and approving of rates and their reasonableness is clearly set out in a statement by the former Director of Traffic of the Board of Transport Commissioners, Mr. W. E. Campbell, contained in the "Proceedings of the Standing Committee on RAILWAYS, TELEGRAPHS AND HARBOURS on Bill B", Volume 8, dated March 4, 1937, and also in the decision

of the Board of Transport Commissioners in the Eastern Rates Case, 6 J.O.R. & R. 133, at pages 140 and 141.

Mr. Campbell's statement reads in part as follows:

"It should be emphasized that the Board does not initiate rates and will not prescribe the first, or initial, rates or charges filed by the carriers referred to. They will file their rates with the Board and, thereafter, the Board may, upon complaint or upon its own initiative, require changes in rates which it finds to be unlawful, discriminatory or unreasonable.

"The only tariffs which, upon being filed, require specific approval by the Board in the first instance are the freight or passenger mileage tariffs (Sections 330 and 334.) These are merely tariffs of maximum rates, beyond which the carrier cannot go. They must be approved by the Board and published in the Canada Gazette before they become effective."

In the Eastern Rates Case it was contended by Mr. Tilley, appearing for the Grand Trunk Railway Co. that since all the increases that were sought in the Eastern Rates Case were lower than standard rates, they must be held to be just and reasonable until the standard rates are declared to be unjust and unreasonable, and consequently the onus is thrown upon the shipper of showing that rates are unjust and unreasonable, rather than on the Railway Company. The Chief Commissioner in his decision respecting Eastern Rates stated:

"In my opinion, however, the onus in this case is on the applicants; and the issues herein are so considered.

"Standard rates are usually rates which, in the very nature of things, are fixed arbitrarily and before traffic conditions have developed.

"In looking into the manner in which the Grand Trunk standard rates, for example, have been approved by the Board, apparently the Board, when organized and in order to comply with the Railway Act, approved these existing standard rates, so as to enable the railway company to legally carry out its business. There was no inquiry as to the reasonableness or justness of these rates one way or another; and, so far as a large part of the traffic was concerned, the company, having special freight tariffs lower than the standard rates, had not observed them and was not observing them at the time the Board was formed and formal approval given. The rates so approved by the Board were the standards already approved by the Railway Committee of the Privy Council. (Underlining ours.)

"With the exception of the rates fixed in the International Rate Order, the rates which are now sought to be advanced are in large measure rates put in voluntarily by the company.

"In the absence of any evidence showing special circumstances compelling the issue of the existing tariffs, they may well be assumed, as against the company issuing them, to have been issued as fair and reasonable rates."

"In so far as rates filed in compliance with Orders of the Board are concerned, the position is even stronger.

"The onus of proof is, therefore, on the applicants, who must show that the rates have been found to be unremunerative; that costs have increased; or that the conditions or exigencies of traffic have changed."

It has also been pointed out by representatives of the Railways on several occasions that rates, prescribed by the Board, are just and reasonable unless subsequently proved to be otherwise. (See Transcript of Evidence, B.T.C., Volume 754, pages 6017, 18, 19; Volume 789, (20% case) pages 18417 and 18418.) It would follow that standard rates are only just and reasonable when so found by the Board.

(9) Suspension of Rates

This Commission is withdrawing the suggestion made at page 135 of its brief in connection with conferring additional powers on the Board in connection with the suspension of rates.

(10) Amendment to Section 52 of the Railway Act, as Proposed by the Canadian Pacific Railway Company

This Commission strongly opposes the recommendation of the Canadian Pacific Railways to abolish appeals to the Governor in Council now provided under Section 52.

(11) Rate Notices

This Commission is unalterably opposed to any lessening of the existing restrictions in connection with the issuance of rate notices, as recommended by the Canadian National Railways at page 192 of their brief. Restrictions in the issuance of rate notices is fundamental to regulations, since publication of rates obviously serves a very important purpose.

MR SMITH: My lord, now I come to page 40 and the proposed amendments to the Maritime Freight Rates Act.

(04)

CAPITAL STRUCTURE
OF THE CANADIAN NATIONAL RAILWAY COMPANY

This Commission has no further views to express, other than those contained in its submission at page 124-125 of its brief.

(5)

IN THE MATTER OF PRESENT-DAY ACCOUNTING
METHODS AND STATISTICAL PROCEDURES

This Commission is not submitting any amendment to give effect to its recommendation contained at page 128 of its brief, since it is understood that interested provinces who have made similar recommendations are submitting proposed amendments in the matter of uniform accounting and other matters related thereto.

(6)

TRANSPORTATION LEGISLATION AND OTHER
FACTORS OF THE RAILWAY ACT UNDER
CHANGED CONDITIONS

Maritime Freight Rates Act

- Amendments and other related aspects -

(1) - Preamble:

The Preamble of the Act, which does not now appear in the Revised Statutes 1927, has been referred to by the Supreme Court of Canada in several judgments. It is the recommendation of this Commission that since the Preamble succinctly sets out some of the principal findings of the Royal Commission on Maritime Claims, and, in effect, gives statutory recognition to these findings, it be again implemented in the Act.

It is suggested, my lord, that the preamble to the Act, which appeared in the original Act, and was not included in the revision of the statutes in 1927, be re-inserted in the Act. I may say that the preamble of the Act has been referred to in some of the cases in the Supreme Court for the purpose---

THE CHAIRMAN: Well, it is there, isn't it?

MR SMITH: It is still there. I do not think, from a strictly legal point of view, it is necessary.

THE CHAIRMAN: I do not think it is customary to put into a consolidation of the statutes.

MR SMITH: I do not think so, my lord. Mr. Matheson suggests that it be put there to give any person reading the Act ready reference to the---

THE CHAIRMAN: Well, we will look into that.

MR SMITH: Yes, my lord.

The next suggestion made in this memorandum appears at page 41:

(11) - Amendment to Section 4:

Add Subsection (d) to Section 4, Subsection 1, to read as follows:

"Traffic moving outward westbound rail and lake, lake, rail and lake - From points on the Eastern lines westbound to points in Canada from ports beyond the limit of the Eastern lines at Diamond Junction or Levis; for example, Moncton to Winnipeg via the ports of Point Edward thence via water to Port Arthur or Fort William - the twenty per cent shall be based upon the Eastern lines proportion of the through rate for the rail mileage from Moncton to Winnipeg."

This new Subsection is considered necessary since the words "all rail" in Section 4, Subsection (b), would appear to exclude shipments moving from the Maritimes to western Canada on through bills of lading by rail, lake and rail, and also by rail and lake. The latter rates are differentially lower than the all-rail rates and their exclusion from the application of the Maritime Freight Rates Act would create an anomalous situation which evidently was not contemplated when the Act was drafted. This amendment, therefore,

will merely correct what would appear to be an oversight.

This section is the section which specifically defines what are preferred movements. It reads now:

"The following are preferred movements as referred to in section three and other sections of this Act:-"

For instance, there is local traffic, all rail, and traffic moving outward, westbound, all rail, and traffic moving outward, export traffic, rail and sea."

It is referred to as subsection (d), but it should be really clause (d), and it is suggested that it should be added to section 4, to read as follows:

"Traffic moving outward westbound rail and lake, lake, rail and lake - From points on the Eastern lines westbound to points in Canada from ports beyond the limit of the Eastern lines at Diamond Junction or Levis; for example, Moncton to Winnipeg via the ports of Point Edward thence via water to Port Arthur or Fort William - the twenty per cent shall be based upon the Eastern lines proportion of the through rate for the rail mileage from Moncton to Winnipeg.

This new clause is considered necessary since the words "all rail" in section 4, clause (b), would appear to exclude shipments moving from the Maritimes to Western Canada on through bills of lading by rail, lake and rail, and also by rail and lake. The latter rates are differentially lower than the all-rail rates and their exclusion from the application of the Maritime Freight Rates Act would create an anomalous situation which evidently was not contemplated when the Act was drafted. This amendment, therefore, will merely correct what would appear to be an oversight.

THE CHAIRMAN: What has been the experience under the Act?

MR SMITH: I think, as a matter of fact, it has been so treated.

THE CHAIRMAN: As if it were there?

MR SMITH: As if it were there. It is merely to clarify that situation. The language employed is quite similar to that in clause (b), as your lordship will notice. You see in clause (b):

" . . . the twenty per cent reduction shall be based upon the Eastern lines proportion of the through rate or in this example upon the rate applicable from Moncton west as far as Diamond Junction or Levis".

THE CHAIRMAN: It is one of those things you would have to examine.

MR SMITH: Yes, my lord; it is a technical matter.

The next amendment is a suggested amendment to section 6:

(iii) Amendment to Section 6:

The Canadian National Railways at pages 18502-18505 of Volume 98 recommend the deletion of Section 6 on the grounds that it serves no purpose and that presently the Canadian National Railways is not complying with Section 6 in segregating the revenues and expenses of the Eastern lines since the time the recommendation was made by the Royal Commission on Transportation in 1932 (see paragraph 48 at pages 17 and 18). However, it is to be pointed out that in the last paragraph of page 18 of the Duff Report the suggestion was made "that the Maritime Freight Rates Act should be applied to the Canadian National Railways in a similar manner to that of other railways within the

territory described in the Act." It would appear that the deletion of Section 6 "in toto" would eliminate the mechanics for the provision of reimbursements to the Canadian National Railways under the Maritime Freight Rates Act. While this is a matter which concerns the Railways in particular, no doubt consideration will be given to a substituted Section if deemed necessary (Reference was made to Section 6 in the brief of this Commission at page 33, and Volume 20, page 3762, of the Transcript.)

THE CHAIRMAN: It was proposed by somebody that section 6 should be struck out?

MR SMITH: Yes, my lord.

THE CHAIRMAN: Who proposed that?

MR SMITH: The Canadian National Railways, I think. I do not think that we should be greatly concerned about this matter. It is a matter for the railways themselves rather than---

THE CHAIRMAN: I notice you say that the Canadian National have recommended the deletion of section 6 .

MR SMITH: Yes, my lord.

THE CHAIRMAN: What do you recommend?

MR SMITH: Well, I do not recommend anything. As a matter of fact, I merely speak about it and suggest that possibly there should be some machinery---

THE CHAIRMAN: You say here that it would appear---

MR SMITH: I do not really know why, if the railways are concerned, we should be -- it is a matter for the Canadian National Railways.

THE CHAIRMAN: You see, you begin by saying Canadian National asked for its deletion, and then you say:

"It would appear that the deletion of Section 6 'in toto' would eliminate the mechanics for the provision of reimbursements to the Canadian National Railways

under the Maritime Freight Rates Act."

MR SMITH: Under that section; but, as I understand the views of the Canadian National Railways, they are not in accord with the suggestion made in Mr. Matheson's brief.

THE CHAIRMAN: Well, is this an anxiety to protect the C.N.R. against itself?

MR SMITH: Against itself; so I am not carrying a torch for the Canadian National Railways; it is up to them. I do not think I need waste the time of the Commission discussing it.

The next suggestion, my lord, is with respect to section 8 of the Act. Perhaps I had better read the Act first:

"8. The purpose of this Act is to give certain statutory advantages in rates to persons and industries in the three provinces of New Brunswick, Nova Scotia and Prince Edward Island, and in addition upon the lines in the province of Quebec mentioned in section two, together hereinafter called 'select territory,' accordingly the Board shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory."

THE CHAIRMAN: That seems to be a very specific direction to the Board.

MR SMITH: Yes, my lord. Now, what is suggested here, and I join---

THE CHAIRMAN: I beg your pardon?

MR SMITH: This Commission now withdraws the amendment to Section 8, recommended at page 67 of the brief and at page 3530 of Volume 19, and wishes to substitute in lieu thereof the addition to the present Section 8, after the

word "territory" (line 9) the following:

"and the Board is authorized and directed to adjust or vary tolls or rates subject to this Act from time to time as may, in the opinion of the Board, be necessary to maintain the said statutory advantages in rates when there have been reductions in tolls or rates elsewhere than in such select territory."

Now, you will remember perhaps that there was quite a long discussion when Mr. Matheson gave his evidence as to the decision in the so-called potato case, in which it was held that under section 8 the power of the Board was limited to the cancellation of a rate outside the select territory which had the effect of destroying or prejudicially affecting advantages in favour of persons or industries in the Maritime Provinces.

THE CHAIRMAN: I think it was said that the Board could not itself substitute another rate.

MR SMITH: Could not substitute another rate.

THE CHAIRMAN: What happens when a rate is cancelled? Is there a reversion to the standard rate then?

MR SMITH: It is a reversion to the original rate.

THE CHAIRMAN: Standard?

MR SMITH: Yes, whatever the rate was before.

THE CHAIRMAN: Whatever the rate was?

MR SMITH: Was before; the previous rate, whether it was a standard rate or commodity rate.

THE CHAIRMAN: Which might have been less than the standard rate. The previous rate might have been less.

MR SMITH: Yes.

THE CHAIRMAN: Probably was less than the standard rate.

MR SMITH: Yes, my lord.

THE CHAIRMAN: Then this one, the new rate, being

cancelled, there would be a reversion to the previous rate.

MR SMITH: To the previous rate.

THE CHAIRMAN: You are sure of that?

MR SMITH: And what is being asked for here is that they have power to adjust or vary rates.

THE CHAIRMAN: What you mean is that in such a case the Board should have power to fix rates which would continue the protection intended to be given by this section; is that so?

MR SMITH: That is right.

Now, the next section -- I may say, on behalf of the Province of Nova Scotia, for Mr. Evans' benefit, I support that proposed amendment.

THE CHAIRMAN: When was that potato case decided?

MR SMITH: 1937.

THE CHAIRMAN: So long ago as that?

MR SMITH: Yes, my lord.

THE CHAIRMAN: Was no representation made to Parliament about it?

MR SMITH: No, my lord, there was not.

THE CHAIRMAN: What year?

MR SMITH: 1937, I think, my lord: 46 C.R.C., page 161.

THE CHAIRMAN: Is the intention, then, to give the Board power to do what the Supreme Court held in that case it had not power to do?

MR SMITH: Had not power under section 8.

Now, this further subsection, my lord, is an amendment proposed by Mr. Matheson: a new subsection 2 to read:

"2. Tolls established from points in the select territory to points in Canada outside such territory

to meet market competition shall not be deemed to be unjustly discriminatory within the meaning of the Railway Act."

THE CHAIRMAN: That is to avoid breaking up the Canadian National Railways.

MR SMITH: Yes, my lord. Mr. Matheson had a scheme, as you will remember, and in the course of his evidence it was suggested that perhaps he was doing it the hard way, if I may put it that way, and this is a simpler amendment to achieve the same purpose.

COMMISSIONER ANGUS: Does this refer to tolls adjusted and varied under the preceding amendment, or does it include tolls that might be established by the railways?

MR SMITH: Yes, my lord.

COMMISSIONER ANGUS: Which?

MR SMITH: It is not the ones that are adjusted and varied; it includes any tolls, as I understand it.

THE CHAIRMAN: All tolls.

MR SMITH: All tolls.

THE CHAIRMAN: You see, the Railway Act now provides against discrimination.

MR SMITH: Yes, that is right.

THE CHAIRMAN: You would remove that

MR SMITH: Yes, that is right. I do not intend to re-argue Mr. Matheson's suggestions; it is just another way of doing it, achieving the purpose which he had in mind.

COMMISSIONER ANGUS: If the railway itself were to establish such a toll, would it still be entitled to get reimbursement up to the level of a normal rate under section 9, subsection 3?

MR SMITH: I assume so, sir.

COMMISSIONER INNIS: Do you need the words "unjustly discriminatory"?

MR SMITH: I think so. I think you have to have it. You may have discrimination under the Act which---

THE CHAIRMAN: Is that the expression used?

MR SMITH: I think "unjustly", "unjustly" or "unduly".

THE CHAIRMAN: It is advisable always to use the same language.

MR SMITH: "unjust and undue" I think are the words.

MR EVANS: Unjust discrimination and undue preference.

MR SMITH: I think "unjustly" is the word, or "unduly".

COMMISSIONER ANGUS: You see, Mr. Smith, the point of my question was this, that the Board on approving any tariff has to certify the normal tolls which but for this Act would have been effective.

MR SMITH: Yes, my lord.

COMMISSIONER ANGUS: Now, if a railway reduces a toll to meet market competition, can you say that that is a reduced toll under the Act?

MR SMITH: If this provision becomes law I would think it would be.

COMMISSIONER ANGUS: And you could say that the rate which but for the Act would have been effective would be the full rate, not a market competitive rate at all?

MR SMITH: Well, sir, on page 43 the reasons for the amendments are dealt with at some length, and I think they could be very well written into the record.

The necessity for amending Section 8 was discussed at some length in the submission of this Commission, and during the hearings was referred to extensively in a number of Volumes covering this Commission's evidence, including:

Volume 19, p.p. 3502, 3503, 3507, 3530-3531,
3620-3635, 3643;

Volume 20, p. 3787;

Volume 23, p.p. 4540-4548;

Volume 24, p. 4650-4658;

Volume 39, p. 7354, 7423-7424, 7426-7428, 7430,
7439-7440, 7464;

Briefly, it was indicated that: -

(1) Motor truck competition and the revival of water transport in the 1930's had nullified to some extent the benefits expected to accrue from the Maritime Freight Rates Act, particularly to the markets of Central Canada.

(2) The interpretation of the Supreme Court of Canada to the effect that while the Maritime Freight Rates Act applied to competitive rates outside the Maritime Provinces, the Board of Transport Commissioners only had the power to cancel the competitive rates, and could not grant a corresponding reduction to maintain the "discrimination between" established by the Act.

(3) In respect to competitive rates outside the select territory, prejudice has to be indicated.

(4) Even though the purpose and intent of the Intercolonial Railway is to afford persons and industries in the Maritime Provinces the larger markets of Canada instead of the restricted markets of the Maritimes, as recognized by the preamble to the Maritime Freight Rates Act, it is not possible with the Intercolonial Railway as a part of the Canadian National to establish rates to meet market competition in Central Canada, for example, without possibly creating discriminations precluded by the Railway Act. It is the submission of this Commission that this limitation is contra to the purpose and intent of the Intercolonial Railway, when it has the effect of impeding shipments rate-wise from the Maritime area.

(5) Horizontal percentage increases are rendering the position of the Maritime shipper more difficult in relation to the position of the short-haul competitors, where the impact of the increases are not so great.

The main objective of the recommended addendum to Section 8 is to make it possible for reductions to be made in the rates from the select territory to destinations outside the select territory when downward adjustments are effected outside the territory in order to maintain the "discrimination between" provided by the Act, rather than leave the Board with only the power to cancel rates, which are found to be contra to Section 8 of the Maritime Freight Rates Act.

Subsection 2 is recommended as an alternative to the proposal in this Commission's brief for the segregation of the Intercolonial Railways from the Canadian National Railway System for rate-making purposes. It is the intent of this Section to relieve the management of the Canadian National Railways of the restrictions of the Railway Act which would otherwise prevent them from implementing rates from the select territory to meet market competition outside the territory; even when it would be in the interest of the Railways and the shippers to effect rates to facilitate the movement of traffic, keeping in mind the purpose and intent of the Intercolonial Railway.

It is important, it is submitted, to point out to your Commission that the new Subsection 2 to Section 8 and the Railway sponsored agreed charges of the Railway Act have an outstanding feature in common, namely, relief from the unjust discrimination provisions of the Railway Act. However, an important difference between the Agreed Charge Part and the proposed Subsection 2 to Section 8 of the Maritime Freight Rates Act is that agreed charges are basically

directed more to benefiting the Railways whereas the new section of the Maritime Freight Rates Act is intended to benefit both the Railways and shippers directly.

Reference was made in this Commission's brief and in Exhibit 47 to the substantial changes that have been made in rates outside the preferred territory. Examples of the competitive rate reductions are found at pages 56-61 of the Appendix of Part 1 of the Canadian Pacific Railways' brief, and also in Exhibit 148, where substantial percentage reductions are indicated from the normal rates which otherwise would obtain.

In the so-called "Interpretation Case" re the Maritime Freight Rates Act 1927, as reported in 41 I.C.C., page 56, there is contained in this decision of the Supreme Court of Canada at pages 69-70 some illustrations of market competition. It is to be observed that these illustrations did not include market competition where the other carrier was another mode of transportation. For example, a particular commodity might be almost entirely moved by truck to a market outside the Maritime Provinces, while the shipper in the Maritime Provinces, not enjoying the alternative mode of transportation, could be severely affected, with consequential loss to the Railways, unless an effort was made to establish rates to facilitate the movement of traffic to the producer dependent upon rail services. It could possibly be, in circumstances of this kind, that a service advantage and not a lowering of transportation charges to the more favoured competitor utilizing other modes of transportation may be the jeopardizing factor which would justify a reasonable market competitive rate from the more distant producer to offset, in part, his disadvantage.

COMMISSIONER ANGUS: Which subsection are you speaking about in the second paragraph on page 43?

MR SMITH: I am speaking really of the new clause (b).

THE CHAIRMAN: In respect of competitive rates outside the select territory, prejudice has to be indicated.

MR SMITH: Yes. Well, that is not affected by this amendment; prejudice would still have to be indicated.

COMMISSIONER ANGUS: Mr. Smith, under your new subsection 2, could that be read so generously that a railway would be entitled to establish a market competitive rate to Vancouver that was extremely low, and to expect to get back from the Government the difference between that low rate and the full rate to Vancouver?

MR SMITH: I am afraid it might be open to that interpretation, yes, sir.

COMMISSIONER ANGUS: Is that altogether a wise provision to put into the Act?

MR SMITH: It is very far-reaching, I may say, sir; that is all I can say.

THE CHAIRMAN: You may have to put a territorial limitation.

MR SMITH: I think so, my lord.

THE CHAIRMAN: What is the real difficulty or grievance? How far does it extend? Does it extend as far as Toronto -- by experience now?

(Page 22665 follows)

MR. SMITH: I think the case put by Dr. Angus is probably extreme, but I think it would be open to that interpretation.

THE CHAIRMAN: Can we say this? Can we say that it extends just so far as potatoes go?

MR. SMITH: Yes.

THE CHAIRMAN: In the Maritimes?

MR. SMITH: In the Maritimes. I think they had that principally in mind.

COMMISSIONER ANGUS: Mr. Frawley has told us that potatoes move to Winnipeg from Alberta.

MR. SMITH: Yes.

THE CHAIRMAN: They put in a market competitive rate to Winnipeg which is extremely low. Would that be something contemplated under this provision?

MR. SMITH: No. I do not think they had that in mind. I think what they had in mind was the potatoe market in Central Canada.

THE CHAIRMAN: Then the market intended to be the subject matter of this proposed subsection 2 had better be indicated.

MR. SMITH: Yes. I think there should be some limitation to it.

THE CHAIRMAN: Instead of saying "to meet market competition", you would say "to meet competition in markets up to--

MR. SMITH: Mr. Matheson suggests to Windsor, Ont.

THE CHAIRMAN: There should be a limitation. All right, go on, Mr. Smith.

MR. SMITH: There is a discussion, my lord, in this brief on page 45 on the purpose of these amendments, but I think the Commission understands perfectly what the object is intended to be.

THE CHAIRMAN: Are there any amendments?

MR. SMITH: There is one here to section 9. I think it only goes to the mechanics, does it not.

MR. MATHESON: Principally.

MR. SMITH: Yes, to the mechanics. Perhaps I will read section 9.

THE CHAIRMAN: Section 9 is a very long one.

MR. SMITH: Yes.

THE CHAIRMAN: This adds a new sub-section?

MR. SMITH: Yes. It is a new sub-section.

Amendment to Section 9:

The recommended amendments to Section 9 are dictated by changes proposed in Section 8 by decisions of the Supreme Court and by an apparent inadvertence in the original drafting of the Maritime Freight Rates Act.

The amendments are as follows: -

Add a new sub-section 4 to read:

"4. In the case of tariff tolls determined to be market competitive, the Board shall certify the normal tolls which but for this Act and the market competition would have been effective and the Board shall in the case of each company, certify to the Minister of Transport the amount of the difference between the tariff tolls and the normal tolls so certified and the company shall be entitled to the payment of the amount of the difference so certified."

Change the present sub-section 4 to read sub-section "5".

THE CHAIRMAN: Would you pardon me a moment. There are now four sub-sections. The last one is number 4. You say: "Add a new sub-section 4" Do you mean to strike out the old one?

COMMISSIONER ANGUS: Change that one to 5.

THE CHAIRMAN: Oh, I see. You change the present sub-section 4 to sub-section 5.

MR. SMITH: Yes, that is it.

THE CHAIRMAN: I see that at the bottom of the page.

MR. SMITH: Yes, change the present sub-section 4 to read "sub-section 5".

THE CHAIRMAN: And to put in a new sub-section 4.

MR. SMITH: Yes. I do not know that we are greatly concerned about this point. It is a matter for the other companies, I suppose, other than the Canadian National Railways to obtain. It is included to enable companies like the Canadian Pacific ^{Railway} Company to meet market competitive rates. He says at the bottom of page 46:

The objective of the new Subsection 4 is to enable the participation of carriers, other than the eastern lines, in establishing market competitive rates similar to the eastern lines as provided by the new Subsection 2 to Section 8.

THE CHAIRMAN: How would you define eastern lines?

MR. SMITH: ^{The term} "Eastern lines" is defined in the Act.

THE CHAIRMAN: Oh, yes.

MR. SMITH: It section 2 of the Act:

"For the purpose of this Act the lines of railway now operated as the part of the Canadian National Railways situated within the Provinces of New Brunswick, Nova Scotia and Prince Edward Island, and the lines of railway, similarly operated, in the Province of Quebec extending from the southern provincial boundary near Matapedia and near Courchesne to Diamond Junction and Levis are collectively designated as the "eastern lines".

THE CHAIRMAN: They are all Canadian National?

MR. SMITH: Canadian National, yes. The provision for the other railways is section 9.

THE CHAIRMAN: To allow the C.P.R. to do the same thing?

MR. SMITH: Yes, that is right. Section 9 is an enabling provision, enabling them to take advantage of the Maritime Freight Rates Act. These sub-sections are, I understand, designed to enable the other lines other than the Canadian National Railways to obtain the reimbursement provided for by the Act in the event of their establishing market competitive rates similar to those on the eastern lines.

Add a new sub-section 6 to read:

"6. Where freight traffic similar to the preferred movements under this Act moved over any continuous route provided by any joint tariff of tolls or rates that existed prior to the coming into force of this Act, such traffic shall be deemed to be preferred movements if other companies owning or operating lines of railway in, or extending into, the select territory meet the statutory rates referred to in Section 7 of this Act."

That is designed to provide for the alternative routing via St. John which the Supreme Court in its decision in 34 C.R.C., page 223 --

THE CHAIRMAN: What is the case?

MR. SMITH: The case of alternative routing in which the Supreme Court ruled.

THE CHAIRMAN: Where is the ruling?

MR. SMITH: It is 34 Canadian Railway Cases. I am reading from page 47, my lord.

THE CHAIRMAN: I thought you were at page 46.

MR. SMITH: I jumped to page 47.

THE CHAIRMAN: You give the case there?

MR. SMITH: Yes, it is given there. The Supreme

Court ruled to the effect that it existed no longer under the provisions of the Maritime Freight Rates Act. They decided in that case --

THE CHAIRMAN: What year was that?

MR. EVANS: 1927.

MR. SMITH: Yes, 1927. The Canadian Pacific Railways supports this proposal. That is one time we are in agreement with the Canadian Pacific Railway. It has been noted that the Canadian Pacific Railway at page 94 of Volume 2 of their brief, and at page 6885 of Volume 36 of the Transcript, supported the proposal of this Commission to re-establish the previous routing.

THE CHAIRMAN: The C.P.R. brief, Volume 1, page what?

MR. SMITH: Volume 2, page 94; and Volume 36, page 6885.

THE CHAIRMAN: Of what?

MR. SMITH: Of the Transcript.

THE CHAIRMAN: What page?

MR. SMITH: Page 6885.

COMMISSIONER INNIS: Has the Canadian National any views?

MR. FRIEL: I might say, Dr. Innis, that they are the reverse. We oppose it.

MR. SMITH: The brief continues:

Add a new sub-section to read:

"7. The Board on the application of any company or person desiring to forward traffic over any continuous route in the select territory and involving movements similar to preferred movements which the Board considers a reasonable, and practicable route, or any proportion thereof, may recommend a joint toll or tolls subject to this

Act for such continuous route, on acceptance of the application of this Act by the other companies defined under this section, and in the event of the failure of the companies to agree on the apportionment the Board may, by order, apportion the toll or tolls and may determine the date when the toll or tolls shall come into effect."

I understnad that this sub-section is recommended in order to remove any doubt as to the Board's power in respect of joint rates between points on the eastern lines and stations on the other railways.

THE CHAIRMAN: You say: "the Board...may recommend a joint toll or tolls--" Do you mean that the Board should first ask the railways to agree on something; and if they fail to agree, the Board should fix the rate itself?

MR. SMITH: That is what is intended, my lord. Section 336 is the provision in the Railway Act, and section 337, dealing with joint tariffs.

COMMISSIONER INNIS: These are all pretty much of a piece?

MR. SMITH: They are pretty much of a piece. The next one, Dr. Innis, is an amendment to sub-section 8, or rather an amendment to add a new sub-section 8 to provide as follows:

"8. Through traffic between Saint John, N.B., and Digby, N.S., moving over a steamship service owned, chartered, used, maintained or worked by a railway company subject to this section shall be treated as all-rail traffic."

THE CHAIRMAN: What is the case today?

MR. SMITH: It is not.

THE CHAIRMAN: There is a separate steamship rate?

MR. SMITH: There is a service now operated by the

Canadian Pacific Railway between Digby and Saint John.

THE CHAIRMAN: Is that operated on a separate steamship rate? Is that it?

MR. SMITH: It does not come under the Maritime Freight Rates Act so as to obtain the differential. There is a provision in section 4, sub-section 2, which reads as follows:

"Traffic moving over the car ferries shall be treated as all-rail traffic."

THE CHAIRMAN: You would have this transportation considered car ferry? Is this a car ferry? I do not know what it is.

MR. SMITH: It takes cars, but it is a ship that operates --

THE CHAIRMAN: Does it ferry cars over?

MR. SMITH: It does ferry cars, yes; but not railway cars. It ferries automobiles.

THE CHAIRMAN: I beg your pardon?

MR. SMITH: It does not take railway cars. It is not a car ferry in that sense. It takes motor cars.

THE CHAIRMAN: You just said something about traffic moving over the car ferries shall be treated as all-rail traffic.

MR. SMITH: Yes.

THE CHAIRMAN: I suppose that was meant for Prince Edward Island, was it?

MR. SMITH: Yes; and also, I suppose, crossing the Strait of Canso.

THE CHAIRMAN: Yes.

MR. SMITH: Now the service between North Sydney and Port aux Basques is treated as all-rail.

THE CHAIRMAN: Yes, under the terms of Confederation.

MR. SMITH: Yes.

THE CHAIRMAN: So the purpose is to make the C.P.R. Steamship Service a car ferry within the meaning of this Act. Is that it?

MR. SMITH: Yes, so that it will be treated as all-rail traffic.

THE CHAIRMAN: How will that affect their tolls?

MR. SMITH: I do not think I need to refer your lordship to the provisions and the terms of union . . with Newfoundland.

(Page 22675 follows).

THE CHAIRMAN: We know what is provided there. Your amendment affects one railway only, and that is the Canadian Pacific.

MR. SMITH: At the present time.

THE CHAIRMAN: You mention Saint John and Digby. You put that right in the Act.

MR. SMITH: Moving over the steamship service between Saint John and Digby but it does not necessarily refer -- it is quite possible some other railway --

THE CHAIRMAN: But at the present time.

MR. SMITH: At the present time it only affects that service. That is the only service there is.

THE CHAIRMAN: Do you know what the C.P.R. thinks of this?

MR. SMITH: No; I have not spoken to them.

MR. EVANS: I will confer about it. I am told we have no objection to it, my lord.

COMMISSIONER INNIS: I suppose the C.N.R. objects to all this.

MR. FRIEL: I would not say we object to it but I am not prepared to commit ourselves.

THE CHAIRMAN: What is that?

MR. FRIEL: I am not prepared to say we object to it or favour it. We haven't given it consideration, that is, as to treating the Saint John to Digby ferry as a car ferry, which it is not.

COMMISSIONER INNIS: Your argument is based on the precedent in the case of Newfoundland.

MR. SMITH: Yes. I am not advocating it for the province of Nova Scotia. This is a submission of the Maritime Transportation Commission. I have no views to express.

THE CHAIRMAN: Can we say today that the Canadian

National opposes this?

MR. FRIEL: I would prefer to make a statement on that later, my lord.

THE CHAIRMAN: Later on.

MR. FRIEL: Yes.

MR. SMITH: I think that is all I may usefully add. Perhaps some of it has not been very useful but that is all I have to say at this time. I would ask that the balance of the submission be taken into the record as read. Thank you very much for your patience.

THE CHAIRMAN: Not at all. You have been very helpful to us.

(The following is the balance of the submission of the Transportation Commission of the Maritime Boards of Trade.)

The objective of the new subsection 4 is to enable the participation of carriers, other than the eastern lines, in establishing market competitive rates similar to the eastern lines as provided by the new subsection 2 to section 8.

The reimbursements suggested in this section would be similar but less extensive than those made to Railways subject to Section 9 shortly after the Maritime Freight Rates Act came into effect, for reductions in rates from those rates originally filed under the Act. For example, see 41 C.R.C. 56, page 59, paragraph 8(b), where it is pointed out that when rates were further reduced from those originally filed under the Act the normal rates specified in some orders were arrived at "by adding to the new reduced rates specified in the tariff the same differentials as existed between the original normal rates and the new rates originally filed under the Act." If this method would be more

satisfactory instead of that proposed in Section 4, it is so recommended. It is to be observed that there was no objection to this method by the Canadian Pacific Railways, as applied to new reduced rates from those originally filed, and they were willing to accept this method in respect of market competitive rates established within the Maritime Provinces.

The new subsection 6 is to provide for the alternative routing via Saint John, which the Supreme Court in its decision, as reported in 34 C.R.C., page 223, ruled to the effect to exist no longer under the provisions of the Maritime Freight Rates Act. The Supreme Court decision negatived a judgment of the Board of Transport Commissioners found in 34 C.R.C. 207, and consequently removed a routing enjoyed for years by shippers in the Maritime Provinces. It is to be noted that the Canadian Pacific Railways at page 94 of Volume 2 of their brief, and at page 6885 of Volume 36 of the Transcript supported the proposal of this Commission to re-establish the previous routing.

It will be remembered that in this Commission's brief at pages 103 and 104, (Transcript, Volume 20, page 3704) doubt was expressed as to the Board's power to exercise the same authority in respect to joint rates between points on the eastern lines and points on other Railroads subject to Section 9, in the same manner as under Sections 336 and 337 of the Railway Act, because of the decision of the Supreme Court of Canada in connection with the alternative routing via Saint John. The new Subsection 7 to Section 9 is recommended in order to remove any doubt as to the Board's power in respect of joint rates between points on the eastern lines and stations on the other Railways.

Since the Maritime Freight Rates Act does not apply on through traffic between Saint John, N. B., and Digby, N. S., on the steamship service operated by the Railway Company, whereas the Maritime Freight Rates Act applies on the car ferry on the eastern lines in the Maritime Provinces, and on through traffic between North Sydney, N.S., and Port aux Basques, Nfld., it is only reasonable that the new Subsection 8 be made applicable to the same extent as similar services in the Maritimes.

The amendments both to the Railway Act and the Maritime Freight Rates Act which this Commission strongly recommends are the result of an intensive and continuous study of changes in conditions and circumstances since remedial action was taken in connection with the Maritime Freight structure in 1927.

Briefly, the proposed amendments have as their objectives:

(a) - In the case of the Railway Act -

(1) An extension of the Board's powers to include cartage tolls and charges associated with rail services and over express facilities.

(2) More inclusive considerations in the prescription of just and reasonable rates so as to lessen the impact of increases on long haul traffic.

(3) The maintenance of port relationships that existed prior to March 28, 1938, as between Canadian ports.

(b) - In the case of the Maritime Freight Rates Act -

(1) To preserve the protection which was originally considered inherent in the original Act.

(2) To remove restrictions and limitations which are not conceivably compatible with the purposes and intent of the original Act.

(3) To provide for the application of the Act under circumstances which appear to have been inadvertently overlooked when the Act was drafted.

(4) To reimplement the important preamble.

(5) To meet changes which evidently were not foreseen when the Act was drafted.

It is to be stressed that the proposed amendments to Section 325 of the Railway Act and Section 8 of the Maritime Freight Rates Act are of particular importance and are intended to provide the Board with the machinery to remedy the situation created by changes since the Maritime Freight Rates Act became effective in 1927. If it appears that the proposed amendments are not sufficiently strong to meet the objectives desired then it is recommended that the sections be strengthened accordingly.

Transport by Water

This Commission is opposed to the extension of Part II of the Transport Act to apply to the transport of goods or passengers -

(a) between ports or places in British Columbia:

(b) between ports or places in Hudson Bay, Nova Scotia, New Brunswick, Prince Edward Island, and the Gulf and River St. Lawrence, east of the western point of the Island of Orleans, or between any two or more places therein including Newfoundland; except in a case in which a strong and definite need is established for such regulation. It is submitted further that there does not appear to be any general need for such regulation, particularly in connection with the Maritime Provinces, and until there is a demand for regulation predicated on a need it is submitted that regulation for regulation's sake is unwarranted.

(7)

IN THE MATTER OF OTHER
TRANSPORTATION QUESTIONS

Rate Base and Rate of Return

This Commission supports the argument of Mr. F. D. Smith, K.C., and Mr. M. A. MacPherson, K.C., Counsel for the Province of Nova Scotia and Saskatchewan, respectively, against any amendment to the Railway Act which would specifically provide for the establishment of a rate base and rate of return for the determination in Canada of just and reasonable rates.

General

The Commission has no more to add to the recommendation or views expressed in its brief with respect to:

(a) The quality and efficiency of rail service in the Maritimes. (Part II, Appendix I, page 2.)

(b) The Feed Grain Assistance Policy. (Part I, Page 116.)

(c) Port Advisory Committees for the National Harbours Board. (Part II, Appendix 1, page 11.)

(d) The Rate Problem of the Minto Coal Area. (Part I, page 114.)

(e) The Chignecto Canal Proposal. (Part II, Appendix 1, page 23.)

However, this Commission wishes to note with pleasure the recently announced improvements scheduled to take place in ferry services between the mainland and Prince Edward Island and to stress again its support of the case of Prince Edward Island for such additional ferry facilities and related improvements that might be necessary to meet the needs of that Province.

THE CHAIRMAN: What is next?

MR. COVERT: Mr. Barry on behalf of New Brunswick.

ARGUMENT BY MR. BARRY

There may be some parts, Mr. Chairman, that I shall omit reading assuming that the reporter will take them as read and put them in the record. The amendments which I suggest are at the conclusion of the written argument.

THE CHAIRMAN: You have grouped them together?

MR. BARRY: Yes, Mr. Chairman. There are minor ones to the Maritime Freight Rates Act, and alternative amendments to that of Nova Scotia and the Maritime Transportation Commission to Section 325.

THE CHAIRMAN: Are you dealing with that now?

MR. BARRY: No, I had not intended to until I came to them.

THE CHAIRMAN: All right.

MR. BARRY: As Counsel for the Province of New Brunswick, following the considerable number of presentations already made, I must of necessity, in order to avoid being repetitious, be brief.

I may say in connection with a great many things, we have adopted the argument of Mr. Smith on behalf of Nova Scotia, especially in connection with rate base and rate of return, and the C.P.R. as the yardstick, although I shall refer to them.

So much has already been said in argument that at the present time, I can only state our attitude with respect to certain matters with which we are concerned. Our general attitude is expressed in Exhibit 50 (Brief of the Province of New Brunswick) and I will avoid undue reference to it. I will not attempt to refute all of the arguments of the C.P.R. against our submissions, as too much time would be

wasted. The Commission can decide on the merits or demerits of the various views.

The amendments which we suggest, that is, New Brunswick suggests, are only proposed to ease the burden of rates on our economy. They are not drastic nor are they any panacea. It is simply an effort to spread the burden. We also support certain amendments proposed by the Maritime Transportation Commission, and such other ones as I will refer to.

In accordance with the letter from Commission Counsel of December 16, 1949, setting out subjects for argument and the order thereof, there are many items therein to which I will not refer, as they do not concern us. With respect to others, we adopt certain arguments already made, as I have referred to with respect to Mr. Smith's argument.

I will mention Economic and Geographic Disadvantages; Horizontal Increases; Long and Short Haul Clauses; Special Rates; C.N.R. Capital Revision; Uniform Accounting; Proposed Grade Crossing Legislation; Appeals to Privy Council Power and Duties of B.T.C. (Saskatchewan Legislation); Maritime Freight Rates Act; Regulation of Trucking; Rate Base and Rate of Return; C.P.R. as Yardstick; and Feed Grain Assistance.

ECONOMIC AND GEOGRAPHIC DISADVANTAGES

Paragraph 2(a) of P.C. 6033, reads:

"Review and report on the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein and recommend what measures should be initiated in order that the national transportation policy may best serve

the economic well-being of all Canada."

Mr. Fairweather said, on April 19, 1950, before this Commission, that everywhere he went, and he said that he went all over Canada, that transportation to the primary producer was a most important and essential element, and that the development of this country was dependent on the success of the primary producer. This is a fair paraphrase of his statement. He also said, in connection with subsidies, that railway rates were a form of subsidy by making the high value commodity carry the low value commodity because to charge the low value commodity the full rate would in most cases drive the primary producer out of business. He further stated that subsidies may be the only solution to the problem. He also expressed the opinion that the saturation point had been reached on rates. If this be so in the more prosperous provinces, it must be beyond that point in New Brunswick.

THE CHAIRMAN: Do I understand that you agree with what Mr. Fairweather said about primary producers?

MR. BARRY: That is right. The statement made by Mr. Fairweather expresses our attitude. He has expressed it in different words. I refer to his evidence later without quoting it verbatim but giving references to the volume numbers in which that evidence is contained.

Let us first look at the economic situation and geographic location of New Brunswick: the per capita income of the Province of New Brunswick for industrial employees in 1941 was \$765 as compared to a national per capita income of \$993. Income is now at least 20% less than the national average, and the recent release of the D.B.S. indicates that Saint John has the highest cost of living in Canada, and our social services are certainly

lower than the national average. (See Maritime Provinces in Relation to National Economy and Report of Rowell-Sirois Commission, in which the Maritimes are referred to as being "chronically depressed"). It is generally regarded that the Maritimes' income is 64% - 75% of the national average.

The luxuries owned in and by the people of New Brunswick are lower than in all provinces, except Prince Edward Island and Newfoundland. In spite of the submission of the Canadian Pacific Railway that the Maritimes are better off than Maine in the United States, statistics as to income, services, social, educational and otherwise, show that Maine is much better off. On the basis of a mature economy usually indicating a more prosperous economy, New Brunswick, being one of the oldest provinces, should be the more prosperous, but it is anything but that. It was far more prosperous comparatively seventy-five years ago. The Canadian Pacific Railway submission compares the Maritimes with Maine, New Hampshire and Vermont, three of the least prosperous of the United States, and any statistical examination will show that the Maritimes suffer in the comparison. One has but to stand on the Maine-New Brunswick border and look first at Maine and then at New Brunswick. Compare farms, equipment and houses, and only one conclusion is possible: New Brunswick is obviously much worse off. Why? New Brunswick has all of the natural advantages of Maine, and some which Maine has not. We have good soil, good lumber, good fish, good climate, some coal, and Nova Scotia, suffering likewise by the same comparison, has steel and coal which Maine has not, yet comparably, the Maritimes are worse off. It is not the fault of the people, as they are diligent workers.

The primary products of New Brunswick are as good, if not superior, to those of Maine. Yet with the extra advantages, we have trouble in selling our products.

Transportation is unquestionably one of the problems and if we cannot sell our primary products, we cannot exist. There are both customs tariffs and political pressure against us from the United States, and freight rates against us from Central Canada. On the other hand, customs tariffs prevent us from buying manufactured materials in the United States where we could buy them much more cheaply, and we pay approximately 30% more for the same articles of ordinary household use from Canadian sources.

(Page 22687 follows)

Mr. Barry

THE CHAIRMAN: What do you mean by political pressure against you?

MR. BARRY: That, Mr. Chairman, you can see instances of, in the United States Congress within the last few weeks about New Brunswick potatoes.

THE CHAIRMAN: Does it come out in the shape of a customs tariff?

MR. BARRY: Embargoes and quotas.

THE CHAIRMAN: You mean that is what it is. It is what happens that affects the movement.

MR. BARRY: That is what it is.

THE CHAIRMAN: In addition to customs tariffs, the United States tariff, what is there - an embargo?

MR. BARRY: On potatoes there is a quota of one million bushels; and after that, seventy-five cents.

THE CHAIRMAN: Customs tariffs, quotas and what else? Embargoes?

MR. BARRY: There is a political demand for an embargo now against Maritime potatoes.

THE CHAIRMAN: A demand for embargoes.

MR. BARRY: By representatives and senators from Maine. Within the last two or three months it has arisen again.

I want to impress on this Commission the economic disadvantages under which we suffer, and these are increased by other contributing factors.

Generally speaking, the railways submit that they cannot raise competitive rates any higher, and most competitive rates are in the Central Provinces. The Railways, on the other hand, need more revenue. The result is that in the ordinary course it would be obtained from non-competitive hauls- and that is referred to in the evidence of Mr. Fairweather and his examination by Mr. Frawley -

and our products, lumber, potatoes, fish, etc., are primary producers which we must sell, and which, in practically all cases, are shipped by rail without competition. There is certainly no truck competition on the export of our primary products, and practically none on the import from Ontario of the manufactured goods which we need. The present result is that the places which can better afford to pay increases do not pay them, and New Brunswick, which I think we have shown, can least afford to pay increases, has to pay the increase along with several other provinces. The poor are made poorer and the rich made richer. I do not think that this is an exaggeration. I am familiar with the argument against subsidies, especially the argument of the C.P.R., but it is one way in which the burden placed on us will be eased, although it will still be there. The objection of the C.P.R. is simply that of a private company to Government interference. If Canada is to remain united, burdens should be distributed, irrespective of the reasons for the existence of those burdens. Some people from Central Canada feel that this is an old argument, but its age should not detract from its truth. If you are going to subsidize industry, one place with a high customs tariff, then subsidize us with a low freight tariff. Otherwise, do not subsidize the Central Canadian manufacturer. We do not assert that controls or subsidies are a desirable means of accomplishing the end desired, but we assert that once any artificial factor, designed to interfere with the complete freedom of trade and labour and transportation, is imposed, then one cannot stop there. That is the danger of controls, but unless we abandon all of them, we must assist those adversely affected by them. We assert that the national policy on trade makes it difficult for us to sell that which we

must sell to live, and therefore we must be assisted in that sale, and transportation is one of the means of so doing.

The principal primary products upon which our livelihood depends happen to be those items on which the proportion of the selling price represented by freight is tremendous. On potatoes the freight rate portion of the total price is in excess of 25% to a Canadian market. On lumber, it is similarly high. On pulpwood it is, to some markets, 50% of the total selling price. That is why, in addition to the distance factor, we are so adversely affected by freight rate increases.

THE CHAIRMAN: When you give these figures, do you mean independently of the Maritime Freight Rates Act or having regard to it?

MR. BARRY: Having regard to it, even with the allowances made.

THE CHAIRMAN: Even with those allowances?

MR. BARRY: Yes.

THE CHAIRMAN: You are still in that position?

MR. BARRY: Yes. In dollars and cents, with the normal selling price of potatoes in Upper Canada, the freight cost is in excess of 25%.

There follows a table on page 6, your lordship, illustrating the comparison in certain factors usually taken to indicate prosperity or lack of it, showing the difference between the New England States referred to in the submission of the Canadian Pacific Railway and New Brunswick. I am not going over it in detail. It speaks for itself. It shows that in any of the States referred to by the Canadian Pacific Railway in its submission, the usual indices of prosperity or at least some of them are far higher there than in New Brunswick.

Let me illustrate, in spite of the Canadian Pacific submission, our situation with respect to Maine, New Hampshire and Vermont from an economic standpoint:

Telephones per 1000 population, 1948

| | | |
|---------------|-----|-----------------------|
| Maine | 200 | Canada Year Book 1949 |
| New Hampshire | 225 | and |
| Vermont | 200 | U. S. Census Bureau |
| New Brunswick | 102 | |

Automobiles per 1000 of population, 1948

| | | |
|---------------|-----|---------------------------|
| Maine | 208 | Canada Year Book 1949 |
| New Hampshire | 206 | and |
| Vermont | 247 | U. S. Public Roads Survey |
| New Brunswick | 88 | |

Amount per pupil for education 1947

| | | |
|---------------|----------|------------------------------------|
| Maine | \$122.44 | Canada Year Book 1949 |
| New Hampshire | 167.19 | and |
| Vermont | 135.00 | U. S. Biennial Survey of Education |
| New Brunswick | 80.00 | |

The C.P.R. Submission, Vol. 1, p. 41-42, uses percentages of population changes to show that the Maritime Provinces are better off than New England. The figures rather indicate the opposite conclusion to the one they have drawn. Increases stated percentage-wise starting with a very small starting figure as compared to increases percentage-wise starting with a much larger figure are misleading. The C.P.R. assertion re New England and the Maritimes - to which I have referred in Volume 1 - is not factual. Have any of the Maritime Provinces, a Maine Turnpike or a University like the University of Maine?

With better basic resources, more coastline, more fishing, more lumber and a better location for coastal trade, we are less prosperous. Why? Partly, at least, because of

our geographic location in Canada, and the expense of transportation to us.

The graph attached to Exhibit 50, (Brief of New Brunswick) illustrates how we are adversely affected by recent increases. That is attached to the exhibit, showing the graphical effect of changes in the freight rates.

In 1871, New Brunswick had 7.74% of the population of Canada. In 1941 it had 3.97%. It is estimated that over 50,000 people left the Maritimes between 1931-1941, and went to U.S.A., and it is reported that 25,000 left last year alone. The D.B.S. estimates that since Confederation, approximately 600,000 people have left the Maritime Provinces.

COMMISSIONER INNIS: Did this 25,000 go to the United States?

MR. BARRY: Mainly.

THE CHAIRMAN: 25,000 left New Brunswick alone?

MR. BARRY: The Maritime Provinces.

THE CHAIRMAN: I have seen reports also that the total immigration from Canada last year was 35,000; that would leave only 10,000 for all the other provinces.

MR. BARRY: This is not an actual count. It is only the Americans who can release that. But that is an estimate of the number, according to a Consular official, who left the Maritimes.

THE CHAIRMAN: Do you mean who went to the United States?

MR. BARRY: Yes, that is right. That is the immigration from the Maritime Provinces to the United States.

THE CHAIRMAN: 25,000 to the United States?

MR. BARRY: That was an estimate made by a Consular official. The Consular offices in New Brunswick - and we

can see it in our own businesses - are just jammed with applications. It would take weeks to get an appointment with the Consul to obtain a visa to go to the United States, I am not exaggerating these circumstances. They are factual.

COMMISSIONER ANGUS: Is that figure for permanent immigration or does it include seasonal work?

MR. BARRY: Permanent emigration. The only seasonal work is under a special arrangement for the harvesting of potatoes sometimes. There is no movement for seasonal work other than in September for a six week period.

THE CHAIRMAN: None for cutting pulpwood?

MR. BARRY: Not that I know of. There was during the war by special terms, but there has not been since the war.

THE CHAIRMAN: Then you would make it look as if about two-thirds of all the emigration from Canada to the United States, comes from the Maritime Provinces.

MR. BARRY: I do not know the figure of 35,000 to which your lordship has referred.

THE CHAIRMAN: I saw that in the newspaper.

MR. BARRY: It is very substantial.

THE CHAIRMAN: That is a deplorably high figure for the whole country.

MR. BARRY: I am not familiar with the total for the whole country, but I have made some inquiry as to the number from the Maritimes, and that is what it is approximated at.

THE CHAIRMAN: All right. We will adjourn now.

--The commission adjourned at 1 p.m. to meet again at 2.45 p.m.

Mr. Barry

- 22694 -

Monday, May 15th, 1950
Ottawa, Ontario.

AFTERNOON SESSION

THE CHAIRMAN: All right, Mr. Barry

MR. BARRY: I had reached about the middle of page 7, my lord.

The value of production per capita in the Maritime Provinces in 1945 was \$533 gross and \$286 net, but in Canada as a whole, it was \$963 gross and \$502 net.

Then there is a reference there to page 96 of the Dominion Bureau of Statistics publication Maritime Provinces in Relation to National Economy.

Mr. Fairweather said on April 20, 1950, at Vol. 110 p. 209, that when transportation rates went up where rail withdrew and trucks alone handled rates, the freight went up and the standard of living of everybody went down and property values went down. On the railways' own argument, the rates have hurt us, as this illustrates the effect of transportation on our economy.

I think it can fairly be assumed then, that increased rates affect the standard of living of a community by depressing it, leaving less money for other services, and further horizontally increased rates disproportionately depress the standard of living of a community at the end of a long haul. This situation is further exaggerated where the freight rate or other transportation cost becomes a very high proportion to the total selling price of the item as it does in the case of primary products of New Brunswick.

It is obvious that a small increase on a high value commodity, where in any event, the labor-union employee is not particularly affected by the increase, has little, if any, effect on the net returns of the producer, especially on producers of non-competitive products, whereas the primary producer, whose wages are not fixed, as in the case of labor, is drastically affected. Since the prosperity of New Brunswick depends greatly on the prosperity of the primary producer, any

decrease in his net returns further depress our standard of living.

THE CHAIRMAN: You say "whereas the primary producer, whose wages are not fixed" - oh, I see. I misunderstood you.

MR. BARRY It is just a comparison.

THE CHAIRMAN: There should not be any comma after "fixed". I thought you were giving that as an example. There should be no comma there.

MR. BARRY: No. I say "as in the case of labor".

THE CHAIRMAN: That comma after "fixed" mislead me; it is "whereas the primary producer whose wages are not fixed as in the case of labor"--?

MR. BARRY: That is right.

THE CHAIRMAN: I see.

Then I refer to page 155 of Maritime Provinces in Relation to Maritime Economy, 1948, on incentive to Maritimes to join Confederation; also page 187. Over the past quarter century, the per capita income of the Maritime Provinces has been 64-78% of national average.

The substantial basis of the argument of New Brunswick for relief and assistance in the matter of transportation, in addition to that already expressed in our original submission, is based upon the situation existing as expressed in the words of Mr. Fairweather, the C.N.R. Witness as stated in Volume 109 Page 20218, Volume 110 P. 20224 and Volume 117 Page 21259 and without reading what he had to say in detail, we allege that the economy is becoming warped - I think Mr. Fairweather used that expression - the rate structure, being part of it, and the interests of the primary producer are being neglected on account of a combination of circumstances. That in a nutshell expresses our attitude, only in different words.

I will not make any reference to the evidence in detail as most of it is opinion evidence but it seems obvious that the burden of supplying additional railway revenue will fall on long haul traffic of which we in New Brunswick form a part and this situation exists because of a combination of circumstances and policies over which we have no control.

Because of lack of competition with the railways by trucks both on the marketing of our primary products and natural resources as well as on the import of manufactured goods, we are very much adversely affected. We submit that we are unable to bear the present burden, aside from any additional increases as it is beyond our economic capacity to do so. The present structure takes no account of the ability to pay and in fact, the very reverse is true as in our case it is the province which is nearly least able to pay which is required to do so.

Some of what I have said and may say will not consist of real argument I must admit but rather is offered as an expression of opinion on certain contentious matters as far as my province is concerned and as very much of the evidence consisted of opinions, it is difficult to argue about opinions as every man has his own and they are difficult to change. The Commission has heard these opinions and will draw its own conclusions. I do not approach this conclusion as a rate case but rather as an economic study as to the effect of transportation upon the various areas of this country. I am not directly concerned with the intricate matter of rates in themselves nor do I presume to tell the officers of the railways just how they should operate. I am simply interested in obtaining a measure of relief for our producers, consumers and manufacturers.

The amendments which we suggest and which I will now read into the record are designed to give some measure of relief to us but it may be that your Commission will desire to accomplish the matter in a different manner but it is our opinion that such relief will in no small measure have to come from the Federal Treasury but that in total, the amount involved will not be great.

After that I could read the amendments, Mr. Chairman, if I may.

THE CHAIRMAN: Pardon me. The relief that you are proposing does come from the Federal Treasury.

MR. BARRY: It is just an extension of the Maritime Freight Rates Act in one and an amendment of section 325 of the Railway Act in the other.

THE CHAIRMAN: Where are they?

MR. BARRY: At pages 32 and 33. If they can be copied into the record at this point, it might be convenient.

AMENDMENTS PROPOSED TO MARITIME FREIGHT
RATES ACT BY THE PROVINCE OF NEW BRUNSWICK

AMEND Section 3 Sub-section (1) (b) by deleting the word "twenty" in the second line thereof and substituting the word "thirty".

AMEND Section 3 Sub-section (2) (b) by deleting the word "twenty" in the fourth line thereof and substituting the word "thirty".

AMEND Section 4 Sub-section (1) by adding a new Sub-section (d) :

"Traffic moving inward, eastbound, all rail from points in Canada outside of the select territory to points inside of the select territory, for example, Toronto to Moncton, the thirty per cent reduction shall be based

upon the Eastern Lines proportion of the through rate or in this example upon the rate applicable from Diamond Junction east as far as Moncton."

REPEAL Section 5 (b), thereby changing (c) and (d) to (b) and (c).

The first amendment on page 32 is simply to change the percentage from "twenty" to "thirty" and to make it applicable to traffic moving inward within the selected area.

THE CHAIRMAN: Pardon me a moment. That is the Maritime Freight Rates Act.

MR. BARRY: That is right.

THE CHAIRMAN: Amend section 3, sub-section 1, by deleting the word "twenty". Oh, yes, twenty per cent would be thirty per cent.

MR. BARRY: Yes, sir.

THE CHAIRMAN: All right.

COMMISSIONER INNIS: What was the other point about the traffic movement?

MR. BARRY: Traffic moving inward, eastbound, all-rail. That is a part of the amendment to the Freight Rate Act. It is the same amendment, really, Mr. Chairman.

THE CHAIRMAN: I beg your pardon?

MR. BARRY: It is to amend Section 4.

THE CHAIRMAN: Before you get there, you have an amendment to Section 3, sub-section 2 (b).

MR. BARRY: Yes. Again there is another amendment there.

THE CHAIRMAN: By deleting the word "twenty" in the fourth line. That is to make it correspond with what you have done, yes. The twenty here would become thirty also.

MR. BARRY: That is right.

THE CHAIRMAN: Yes. Then you go on. What is next?

MR. BARRY: Section 4, sub-section 1. That is the definition of what are traffic movements.

THE CHAIRMAN: Just a minute. You say to amend Section 4, sub-section 1 by adding a new sub-section (d). You mean a new paragraph (d)?

MR. BARRY: Yes, that is right. There are three paragraphs (a), (b), and (c). It would be a new (d). It would have the affect --

THE CHAIRMAN: Perhaps you had better read it.

MR. BARRY: Very well. It reads as follows:

"Traffic moving inward, eastbound, all rail from points in Canada outside of the select territory to points inside of the select territory, for example, Toronto to Moncton, the thirty per cent reduction shall be based upon the Eastern Lines proportion of the through rate or in this example upon the rate applicable from Diamond Junction east as far as Moncton."

THE CHAIRMAN: Where you say that the thirty per cent reduction shall be based upon the Eastern Lines proportion, you are not excluding the Canadian Pacific?

MR. BARRY: No. Under the Act itself, it is open to the Canadian Pacific to take advantage of the same provisions.

THE CHAIRMAN: To what extent have you the concurrence of your partners in the Maritimes in this?

MR. BARRY: I would rather that they would speak for themselves. The Province of Nova Scotia has mentioned certain types of goods in their brief on which they want consideration and a reference to the brief which show it to

extend especially to goods brought in to be processed.

THE CHAIRMAN: Raw materials?

MR. BARRY: That is right.

THE CHAIRMAN: Mr. Smith told us that the other day.

MR. BARRY: Yes. That is the extent of their request.

THE CHAIRMAN: He gave us the example of pig iron.

MR. BARRY: Yes.

THE CHAIRMAN: I do not think he gave us any other example. You go further than that?

MR. BARRY: Yes.

THE CHAIRMAN: You would make it all along the line, all commodities.

MR. BARRY: Yes, on that proportion of the haul which is in the select territory. It does not change the select territory or the size of the select territory.

THE CHAIRMAN: No. Just going eastbound.

MR. BARRY: That is right.

THE CHAIRMAN: We shall hear presently from Prince Edward Island.

MR. BARRY: Yes.

THE CHAIRMAN: Anything from Newfoundland? Is Newfoundland interested in that at all?

MR. BARRY: I would not want to say. I did not discuss it with Mr. Lewis. I could not speak for him.

THE CHAIRMAN: Because the Act applies to all the provinces.

MR. BARRY: Yes, that is right.

THE CHAIRMAN: Your amendment does not make any distinction as between New Brunswick and the others.

MR. BARRY: No. It is just an amendment to the

general Maritime Freight Rates Act. It does not apply in the same sense to Newfoundland.

THE CHAIRMAN: No, probably not.

MR. BARRY: Not as it does to the three original Maritime provinces.

THE CHAIRMAN: Are you prepared to tell us anything about the affect of that? The other provinces gave us their opinions; at least, Nova Scotia has.

MR. BARRY: That is right.

THE CHAIRMAN: And Newfoundland.

MR. BARRY: As far as New Brunswick is concerned,-- and I would prefer to speak for New Brunswick rather than to reflect the attitude of the other provinces,-- we investigated it, had many discussions and much consideration was given to it, and there was no objection made in the province of New Brunswick to it by anybody.

THE CHAIRMAN: That is, there are no manufacturers down there who feel that they will suffer by giving these low rates to manufactureres coming in from Central Canada?

MR. BARRY: As to that question, I would not want to categorically say that there are none, but I will say that there are none who advised us of it, and much publicity was given to it and it was discussed with many. I know of no manufacturer who expressed any objection to it whatever.

COMMISSIONER INNIS: Is your position not somewhat similar to that of Saskatchewan?

MR. BARRY: It might be in some respects. There is something in common; unless it be that there is opposition to it from some sources in the West that there may not be in the East.

COMMISSIONER INNIS: They wanted a sort of Maritime Rates Act in the Prairie Provinces, as I remember it, along

the lines which you have suggested.

MR. BARRY: Yes, they do. I do not know whether there is opposition to it from the other Western provinces. There is none within New Brunswick to such a suggestion.

COMMISSIONER ANGUS: I suppose those shipping from Maritime ports to Newfoundland might be adversely affected, from Halifax; people who do not like the lower railway rates to Newfoundland.

(Page 22704 follows)

MR BARRY: I do not think myself, sir, that the shippers have too much difficulty competing with rail haul.

THE CHAIRMAN: You see, Mr. Barry, you are asking us to do something which would affect not only New Brunswick but Nova Scotia and Prince Edward Island.

MR BARRY: That is right, sir.

THE CHAIRMAN: Have you looked around to see what possible objection those provinces might have, and can you meet that objection now?

MR BARRY: Well, I would rather not speak for them. I mean, I know they were aware of the amendment which I was to propose, sir, because copies were given to them before.

THE CHAIRMAN: I do not remember that anybody discussed your amendment. I do not think Mr. Smith referred to it in his argument.

MR BARRY: No, I do not think he did, sir, but I just say that copies were given to counsel some time ago.

THE CHAIRMAN: Well, I do remember when we were down in the Maritime Provinces last summer it became evident that New Brunswick was alone in asking for this change.

MR BARRY: In asking for it, yes, sir -- although I do not know the attitude of Prince Edward Island; they will be able to discuss it in their own argument afterwards.

THE CHAIRMAN: Then you had better go on, Mr. Barry.

MR BARRY: I could mention the next amendment now, sir. There have been so many amendments---

THE CHAIRMAN: Now we come to the Railway Act.

MR BARRY: That is right. There have been so many amendments to section 325. Before reading it, sir, I must say that it does constitute to an extent a declaration of policy, which is generally objectionable in a statute, and it recites factors that should be considered, and the Board

does now have the power, but the fact of the matter is that, inspite of arguments before the Board on two or three occasions concerning the incidence of horizontal increases, the Board didnot take those factors into consideration.

THE CHAIRMAN: You had better read your amendment.

MR BARRY: This first one is:

AMEND Section 325, Sub-section 5:

by inserting after the word "Company" in the fifteenth line thereof and before the word "Provided" in the said fifteenth line, the following words:-

THE CHAIRMAN: That is just before the proviso.

MR BARRY: That is right, sir.

"Provided that the Board, in fixing, changing, determining or enforcing just and reasonable rates, shall consider the following factors in exercising their authority hereunder and shall fix, change, determine or enforce such rates with xa view to obtaining the maximum flow of traffic and a maximum exchange of goods between all parts of Canada with the least possible disturbance of existing rate relationships and with the purpose of causing the incidence of such rate changes to be borne equitably by all sections of Canada:

- (a) effect on competing industries;
- (b) effect on competing producers;
- (c) effect on consumers in different areas;
- (d) effect on marketing of primary products
both agricultural and mineral;
- (e) effect on export trade of Canada;
- (f) effect on import trade of Canada;
- (g) effect on railway revenues."

THE CHAIRMAN: Have you looked into things to see to what extent that agrees with the direction given to the Board in this present revision?

MR BARRY: In 1487, sir? In the General Freight Rate Investigation?

THE CHAIRMAN: Yes, 1487. You see, they are asked there to establish a fair and reasonable rate structure

"which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities" --

that is the first thing ; then

"so as to permit the freest possible interchange of commodities between the various provinces and territories of Canada and the extension of Canadian trade both foreign and domestic, having due regard to the needs of agriculture and other basic industries."

MR BARRY: That is right, sir.

THE CHAIRMAN: Is that much of a departure from what you put in?

MR. BARRY: Possibly not substantially, sir, but---

THE CHAIRMAN: I was wondering whether you would not have been well advised, if you could do so without sacrificing much, just to make that the language of your proposed amendment.

MR BARRY: Well, it might do it, sir, but I do not think it is specific enough in the---

THE CHAIRMAN: Well, perhaps it is not, but I mean if it was. You see, apparently the Government are aiming at producing that result, a result which will permit the freest possible interchange of commodities, and so on, between the various provinces and territories of Canada and the extension of Canadian trade both foreign and domestic, having due regard, to the needs of agriculture and other basic

industries. Now, they have asked the Board to fix their freight rates with those objects in mind, you see.

MR BARRY: Well, we have asked the Board---

THE CHAIRMAN: Did you examine that Order in Council when you were drafting this?

MR BARRY: Yes, sir, I did.

THE CHAIRMAN: Can you tell me, then, what differences there may be between the two?

MR BARRY: Well, sir, if the Board fixes just and reasonable rates, and the law under which they would act would be just the same as it was during the last two rate hearings, and the Board considered----

THE CHAIRMAN: I beg your pardon?

MR BARRY: As the law was during the last two rate hearings---

THE CHAIRMAN: But I say if you were to make this Order in Council the law.

MR BARRY: Well, I do not think that it would be specific enough, sir, in the light of past experience.

THE CHAIRMAN: Then is there any difference? You see, this Order in Council is very important and instructive, because it shows what the Government is aiming at.

MR BARRY: That is right, sir.

THE CHAIRMAN: Can you tell us, then, to what extent if any your amendment would depart from that aim or extend beyond it?

MR BARRY: In its purport it would not depart, sir, but as to the specific words used it would depart. The general import of one would be the same as that of the other, but perhaps mine is more detailed, and I had thought it would be necessary, sir, for it to be more detailed, although, as I say, I do not agree under ordinary circumstances that it should be in a statute, and your lordship

may say the Board has the power, but we feel the Board has so fettered itself by its past treatment that it does not take those factors into consideration.

THE CHAIRMAN: Well, I read the other day how the Board just in the one judgment repeated three or four times its inability to take economic conditions into consideration, to encourage industry and things of that sort.

MR BARRY: We do not ask them to encourage industry, sir.

THE CHAIRMAN: Well, you are not asking that; I am just mixing that up with the rest. I mean, there is a disclaimer apparently all along in the Board's attitude toward these things.

MR BARRY: That is why we mentioned especially, in view of what Mr. Fairweather, for instance, said, that if the railways needed \$50 million more there was only one place they were going to get it, and that was where there was no competition.

THE CHAIRMAN: That was the 21% Case; I had it here; perhaps I have it yet.

COMMISSIONER INNIS: Does this cover Mr. Frawley's proposals, Mr. Barry?

MR BARRY: That is right, sir.

THE CHAIRMAN: It does

MR BARRY: Yes. Mr. Frawley can speak for himself; I was looking to see if he is here, sir. Mr. Frawley made special reference to one proposed amendment to section 325.

THE CHAIRMAN: Well, anyhow, go on. The copy that I had of the 21% judgment is gone, and this one is not marked, so I cannot find those references easily. You remember what I refer to?

MR BARRY: I do, sir.

THE CHAIRMAN: Now, would this amendment of yours give some power and duty to the Board which today they have not got?

MR BARRY: I do not think so, sir. I think they have the power to do it.

THE CHAIRMAN: I mean which they have refused to exercise.

MR BARRY: That is right, sir.

THE CHAIRMAN: You say that?

MR BARRY: They would be required to take those factors into consideration, sir.

COMMISSIONER ANGUS: Do you attach any importance to this, Mr. Barry? You mention the effect on railway revenues as one among seven things that the Board has to consider.

MR BARRY: That is right, sir.

COMMISSIONER ANGUS: And my understanding has been that rates were not just and reasonable unless they were just and reasonable to the railways; it was not one of many things, but an essential thing.

MR BARRY: Well, it may not be necessary to have it there, but I dislike to put in the other factors without at least mentioning that that was one of the factors. It may not be necessary.

THE CHAIRMAN: What may not be necessary?

MR BARRY: That is the part about the effect of the changes upon railway revenues.

COMMISSIONER ANGUS: I was not so much concerned with its being necessary or not as with the possibility of putting it in like this, making it seem as if the effect on railway revenues had ceased to have quite the importance that it did have under the previous interpretation of the Act.

THE CHAIRMAN: I have seen in reading over these cases they say that just and reasonable means just and reasonable to the railways and to the shippers and to the consignees -- that is, whoever pays the freight.

MR BARRY: That is right, sir.

THE CHAIRMAN: Those are the parties to the just and reasonable.

MR BARRY: But I think in fact, sir, the question of whether they were just and reasonable in practice was whether they were just and reasonable to the C.P.R.

COMMISSIONER ANGUS: Well, is your amendment designed to change that?

MR BARRY: To make them consider other factors? Yes, sir, it is.

THE CHAIRMAN: Well, why do you put in that last? You already have "just and reasonable", which means that they have to take into consideration the railways as well as the shippers.

MR BARRY: Well, sir, that is not in the statute.

THE CHAIRMAN: Well, I mean---

MR BARRY: In practice.

THE CHAIRMAN: I do not think anybody disputes that; it is held.

MR BARRY: Well, sir, it would not make any difference to me if it were taken out, but I felt that it would be at least one of the factors if we were to list them.

THE CHAIRMAN: Well, isn't that what they are after all the time? They are providing revenue for the railways.

MR BARRY: Yes, sir.

THE CHAIRMAN: They are giving the railways a means of raising revenue, but surely it is not necessary to put that in.

MR BARRY: Well, it is all right, sir; I would be

glad to have it eliminated.

THE CHAIRMAN: Well, I think I would eliminate it.

COMMISSIONER INNIS: But you do draw a distinction between the Canadian Pacific and the Canadian National?

MR BARRY: And the Canadian National; dealing with both railways. I put it in more for the benefit of the railways, in the sense that I was not overlooking their needs, than to attempt to change the definition.

THE CHAIRMAN: You see, you begin by saying:

"Provided that the Board, in fixing, changing, determining or enforcing just and reasonable rates, . . ."

You see, you repeat the language that is already there.

MR BARRY: That is right, sir.

THE CHAIRMAN: So that brings in the interpretation.

COMMISSIONER INNIS: Does this second or this other alternative meet some of the points that the Chairman has raised?

MR BARRY: It may, sir. That is why I had difficulty putting it in one. This second one, which I would read, Mr. Chairman, is basically part of the Hoch-Smith resolution in the United States:

AMEND Section 325

by inserting in sub-section 5 - after the words "the Company" in the fifteenth line thereof, the following:

"Provided always that the Board in exercising their authority hereunder to fix, change or determine just and reasonable rates, shall do so with a view to obtaining a maximum flow of traffic and a maximum exchange of goods between the people of Canada themselves and between the people of Canada and people outside thereof, at the least possible cost to the people of Canada and the Board shall also fix, change

or determine such rates with a view to causing the least possible disturbance to existing rate relationships between competing industries and competing primary producers for markets and with a view to spreading the incidence of such changes in rates over all the consumers, producers and shippers of Canada in as nearly an equal proportion as possible in order that consumers, producers, and shippers of any particular area or areas shall not be unduly (or unfairly) affected by such changes because of the geographic location of any particular consumer, producer or shipper, while also giving due consideration to the revenue needs of the railways."

THE CHAIRMAN: Now, that is an alternative.

MR BARRY: That is right, sir.

THE CHAIRMAN: And where do you say you took it from?

MR BARRY: I did not take it from anything. Some of the language was in the Hoch-Smith resolution, sir. It comes to a declaration of policy similar to that, but it is because of the lack of the Board, we say, in taking into account those factors that it has become necessary to mention them. I think the Board has power to do that now, Mr. Chairman, but they do not.

THE CHAIRMAN: Well, go on, Mr. Barry.

MR BARRY: A new subsection 7 and subsection 8 to Section 325:

INSERT new Sub-section 7 and Sub-section 8 to Section 325:

s.s.7 new - "The Board is hereby directed to examine the incidence of all general rate increases granted since April 7, 1948 for the purpose of giving effect to the intent expressed in s.s.5 hereof and for the purpose of restoring rate relationships which existed

on that date insofar as possible in order that no producer, shipper or consumer shall be unfairly affected by such general rate increases, and if it appear to the said Board that any producer, shipper or consumer has been unfairly affected as aforesaid, then the Board shall forthwith initiate measures to alleviate such circumstances."

THE CHAIRMAN: What you are asking for there is an adjustment back to previous relationships; isn't that it?

MR BARRY: In so far as possible.

COMMISSIONER BARRY: How does this differ from that put forward by Mr. Smith and by Mr. Matheson?

MR BARRY: Not greatly, sir; that is very much the same.

THE CHAIRMAN: What existing rate relationship? What disturbance have you in mind particularly from New Brunswick?

MR BARRY: The disturbance of rate relationships as instanced by the evidence of Mr. French, the manager of Enamel Heating, who illustrated his business as compared to that in Carleton Place, Ontario, dealing with the same materials and the same manufactured goods, whereby his total increase in freight was \$70,000 and the total increase to that industry was \$12,000. It affected his net---

THE CHAIRMAN: You mean by the horizontality of the increase; is that it?

MR BARRY: That is right, sir. The increase was so disproportionate. That is a concrete example. The difference in the amount of the increase of \$50,000 or \$60,000 could be sufficient to put the firm out of business under some circumstances.

THE CHAIRMAN: Now, he always paid more, of course, than the other person did.

MR BARRY: Yes, sir.

THE CHAIRMAN: So many dollars more.

MR BARRY: That is right, sir.

THE CHAIRMAN: Or so many cents more. Would you substitute for what was done a continuation of that margin in dollars and cents?

MR BARRY: No, sir.

THE CHAIRMAN: Between the two?

MR BARRY: No, not the same margin. As Mr. French says himself, and we also say, we expect to pay more of an increase, but not so much more as the figures which he gave illustrated.

THE CHAIRMAN: But, you see, you are asking for a restoration.

MR BARRY: In so far as possible, sir; not a flat restoration of rate relationships.

THE CHAIRMAN: Well, in so far as possible;
"for the purpose of restoring rate relationships which existed on that date insofar as possible" --
that could be taken to restore them entirely if they want to.

MR BARRY: Yes, sir, but, while they give effect to the revenue needs of the railways, as mentioned in the previous amendment---

THE CHAIRMAN: I suppose you really mean in so far as reasonable, don't you?

MR BARRY: That is right, sir, because they could not do it completely without neglecting the revenue requirements of the railway, and I do not intend that they should so neglect those, because they are mentioned.

THE CHAIRMAN: "In so far as may be necessary to provide that no producer, shipper or consumer shall be unfairly affected" --
that is what you mean?

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MR BARRY: That is right, sir.

THE CHAIRMAN: "In so far as may be necessary to provide that no producer, shipper or consumer shall be unfairly affected."

Of course, if a thing is unfair it must go, by the very fact that it is unfair.

MR BARRY: Well, we have some now that we think are unfair, and they have not gone, sir.

THE CHAIRMAN: Then you still leave it with the Board as to just what they ought to do, though.

MR BARRY: We have to, sir.

THE CHAIRMAN: I mean, you would have to, yes.

MR BARRY: We have to leave certain discretion with them. They say now that that is not one of the things which they will consider.

THE CHAIRMAN: Oh, yes, that is, I think, quite evident. I wish I could lay my hand on what they said; I am sure it would mean that.

MR BARRY: The next is:

ss.8 new - "in any application to the Board for a change in rates or tolls, it shall be incumbent on the applicant to show to the satisfaction of the Board that the proposed changes are designed to comply with s.s.5 hereof as far as it is possible and the Board shall not vary any rates or tolls until it is satisfied that a minimum of disturbance in existing rate relationships will result from the granting of such application."

THE CHAIRMAN: When you speak of a minimum of disturbance, you mean no unfair disturbance? Is that what you mean?

MR BARRY: That is right, sir; "minimum" would include that, I thought.

THE CHAIRMAN: Well, even if it is minimum, you will not tolerate it if it is unfair.

MR BARRY: Well, it would have to comply with subsection 5, sir, and it could not be unfair and comply with subsection 5.

THE CHAIRMAN: But you have used the word "unfair".

MR BARRY: That is right, sir.

COMMISSIONER ANGUS: Would the effect of this, Mr. Barry, be that if railways were to ask for a general increase they would have to show that each rate to be increased could be increased without giving rise to the type of unfairness that you describe?

MR BARRY: To the minimum of it, sir, the minimum of disturbance of existing rate relationships.

COMMISSIONER ANGUS: It would have to be shown in respect of substantially each rate?

MR BARRY: Well, sir, the procedure may be laid down by the Board that notice would be given as to the publication of the proposed changes, and with opportunities for people who wished to contest any of them to appear.

THE CHAIRMAN: I do not see what use could be made of that word "minimum", because one man's minimum might not agree with another's.

MR BARRY: Well, that is right, sir, unless in contest over the fairness or unfairness of it the Board would decide that the railway had complied.

THE CHAIRMAN: That is what you mean, isn't it?

MR BARRY: That is right, sir.

COMMISSIONER ANGUS: Under this wording, if the applicant were a railway, wouldn't it, even if the rate was not charged, have to produce evidence to show that the changes conform to your---

MR BARRY: That is right, sir.

COMMISSIONER ANGUS: Might not that be an onerous business?

MR BARRY: Not necessarily every rate, sir. If they called evidence, I assume, in practice, to state that they had endeavoured to obtain these increased revenues by a manner in which they intended to give the least possible disturbance, or to have no unfair changes made, until somebody contested it, I assume their evidence would be taken.

COMMISSIONER ANGUS: Well, supposing the request was for a ten per cent increase across the board, and then the railways asked to satisfy this condition by showing that none of the rates or tolls to be varied will create more than a minimum of disturbance, doesn't that pretty well mean going over every rate?

MR BARRY: Oh, no, sir; just the fact that the railways file a tariff and we assume comply with the law would establish a prima facie case that they were as fair as they could make them.

THE CHAIRMAN: That is not what you say, though. You see, you say that on the application it shall be incumbent on the applicant to show.

MR BARRY: To the satisfaction of the Board.

THE CHAIRMAN: To the satisfaction of the Board.

MR BARRY: Well, that would be a matter for the Board, to say what was their satisfaction.

THE CHAIRMAN: "That the proposed changes" -- that is all of them, you say?

MR BARRY: That is right, sir.

THE CHAIRMAN: "Are designed to comply with s.s.5 hereof" -- I think those words are superfluous -- that in each case they will cause no unfair disturbance in existing rate relationships; isn't that it?

MR BARRY: That is right, sir.

THE CHAIRMAN: Each change. Now, the railways come and say, "We want twenty changes," and they will have to satisfy the Board in each case that what they are proposing will not bring about any unfair disturbance in the existing rate relationships; isn't that so?

MR BARRY: That is right, sir. The man simply testifies to that or makes an affidavit as to that in his opinion.

THE CHAIRMAN: If there were nobody there opposing, the Board would have to satisfy itself, and the onus would be on the railways to produce evidence.

MR BARRY: If notice was given of the application.

THE CHAIRMAN: I beg your pardon?

MR BARRY: If notice was given of the proposed application for change.

THE CHAIRMAN: Well, I suppose the Board would have power to do that if it wished.

MR BARRY: That is right, sir.

THE CHAIRMAN: Give notice that it will hear opposition if any opposition develops.

MR BARRY: And if nobody appears, then I presume the Board would simply accept the fact that they were not unduly disturbing.

THE CHAIRMAN: Oh, yes; we have heard very loud complaints against that practice, that the Board should not do that, the Board should have its own means of knowing.

MR BARRY: That is true, sir; I feel the Board should be able to gain information more than they did.

(Page 22719 follows)

COMMISSIONER INNIS: Don't you think you are in danger of making existing rate relationships a matter of adhering to the status quo to the point that you give shelter to all sorts of inefficient industries?

MR. BARRY: It could, sir, and I appreciate the danger. That is the danger of putting this declaration in the Statute. If the Board under the present Statute will not take into account the position of existing efficient industries, then I know of no other way in which I can require them to do so.

THE CHAIRMAN: Would it be possible to arrive at better results by leaving it to the general language of "undue preference"? That is in the Act now.

MR. BARRY: Well, it has not been sufficient.

THE CHAIRMAN: I mean, those words are in the Act.

MR. BARRY: That is right, sir, but that has not been sufficient up until now, especially in the light of the decisions of the Board when questions such^{as}/have been illustrated by steel companies and Enamel Heating have come up.

THE CHAIRMAN: Yes, because there is a danger, you know, of crystallizing trade relationships. You want to go back before 1948, you say?

MR. BARRY: Well, sir - -

THE CHAIRMAN: Then if you crystallizethem there, as Dr. Innis said, how long are they to remain sacred?

MR. BARRY: If we don't do something about it, sir, and times become a little difficult - -

THE CHAIRMAN: That is what I mean. Is the Board to go back to what you call pre-existing relations or to go ahead now and say that you could revise

all these rates as they are now, but set them so that there will not be any undue advantage given to one over the other.

MR. BARRY: Of course, then we crystallize next year instead of two years ago.

THE CHAIRMAN: No, no. You see, if you go back and say there were trade relations existing in 1947 - -

MR. BARRY: That is right, sir.

THE CHAIRMAN: "And we want them restored".

MR. BARRY: Insofar as possible.

THE CHAIRMAN: Insofar as reasonably possible, they are then to be the basis of all rate-making until something else is done about it.

MR. BARRY: That is right, sir.

THE CHAIRMAN: Well, are you sure that is always going to be desirable?

MR. BARRY: Not always, sir.

THE CHAIRMAN: Don't you think then, that a more flexible language would be better, that no rates at any time should constitute an undue preference of one competitor over the other? Isn't that what Mr. French is complaining about, that he is put in an unfair position by what was done recently?

MR. BARRY: That is right, sir.

THE CHAIRMAN: That what was done recently has given an undue preference to his competitors?

MR. BARRY: That is right.

THE CHAIRMAN: That is what I have in mind, whether you could not get some language that would - -

MR. BARRY: We would have to change the language of the Statute as at present, although I am not dissatisfied with the language itself; it is the interpretation of it.

THE CHAIRMAN: Show me the language of the Statute as it is at present.

MR. BARRY: "Sub-section 5,: Notwithstanding the provisions - - "

THE CHAIRMAN: Pardon me a moment, that is the Railway Act?

MR. BARRY: Yes, sir, Section 325, sub-section 5.

THE CHAIRMAN: Yes?

MR. BARRY: "Notwithstanding the provisions of Section 3 of this Act, the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates and to change and alter rates as changing conditions, or cost of transportation may from time to time require, shall not be limited or in any way affected by the provisions of any Act of the Parliament of Canada or by any agreement made or entered into pursuant thereto, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the Company."

THE CHAIRMAN: Well, that is a limited application of the words, you see, the last clause. If any undue or unreasonable preference is shown and then the defence is put up that there is some Statute which justifies it and the Board has to put that aside - -

MR. BARRY: That is right, sir, but the words "just and reasonable", I would assume, would automatically exclude that in any event.

THE CHAIRMAN: I beg your pardon?

MR. BARRY: The words "just and reasonable" would probably automatically exclude that, would not permit that undue preference to be given.

THE CHAIRMAN: Well, has that been, for instance, on the occasion of this recent application which has drawn out at such length, wasn't it urged on the Board that what was asked to be done by the railways would be unjust?

MR. BARRY: That is right, sir.

THE CHAIRMAN: And unfair? And didn't they have full power to hear that complaint and to grant it if they wanted to?

MR. BARRY: That is right, sir.

THE CHAIRMAN: Then, are you going back to the same Board?

MR. BARRY: That is why I don't want to go back to the same Board with the law as it is.

THE CHAIRMAN: They don't say any other things that they had no right to do a certain thing, there is the law.

MR. BARRY: They have said in their cases, sir, that some of the things we complained about they did not consider as making anything unjust or unreasonable.

THE CHAIRMAN: You say that they are to be unjust and unreasonable if they disturb existing relations unduly?

MR. BARRY: Yes, sir.

THE CHAIRMAN: There again, the Board will have to say whether or not there is an undue disturbance.

MR. BARRY: That is right.

THE CHAIRMAN: Are you any further ahead?

MR. BARRY: Then their task, not only policy, is laid down that would require them.

THE CHAIRMAN: I mean, isn't their present task under the Act as it is?

MR. BARRY: But they have so construed their task - -

THE CHAIRMAN: That is, they cannot allow railways to set up undue or unreasonable preferences in their rates, and they must not listen to the railways if they offer a Statute as their excuse.

MR. BARRY: That is right, sir.

THE CHAIRMAN: Well, surely that is strong language?

MR. BARRY: I am not dissatisfied, sir, with the language.

THE CHAIRMAN: You are not dissatisfied?

MR. BARRY: Not with the language. I am dissatisfied with the interpretation that has been placed upon what constitutes an undue preference.

THE CHAIRMAN: And you think you would get a better interpretation than this language?

MR. BARRY: If there were something in there that would say that a situation such as has been instanced by Senator Fogo or Mr. Forsyth or Mr. French, we say that constitutes an undue disturbance of the rate relationship and could be the means of putting the industry concerned out of business.

THE CHAIRMAN: Yes, I know, and that is provided under the Act as it is.

MR. BARRY: That is true, but the Board says that does not constitute an unjust discrimination in their interpretation of the Act.

THE CHAIRMAN: Then are you going to get them to say that it does constitute an undue disturbance of relationship?

MR. BARRY: Not under the Act as it is?

THE CHAIRMAN: No, under your draft.

MR. BARRY: We would hope so, but we don't think they would have considered it.

THE CHAIRMAN: The point is, I don't think that they would find one more than the other, and I think they would tell you that after having investigated all the evidence, if they did grant something that you thought unjust, they would simply say: "No, we don't think it is unjust".

MR. BARRY: Well, we argue to this Commission that that is unjust.

THE CHAIRMAN: Yes, I know, but I am just wondering whether the language you ask us to substitute in the Act for the present language is getting you any further ahead. I am not sure. Maybe it is.

MR. BARRY: It could be, sir, that the words having been interpreted differently by the Board, we would not require the amendment, but they having interpreted it that way, if we go back to them with the law as it is they will tell us the same.

THE CHAIRMAN: If they interpreted it that way, but if they now decided that in a given case the rates you complained about were not unjust, were not preferential.

MR. BARRY: It has been in a given case, but the general principle has been laid down.

THE CHAIRMAN: Well, they must have decided that

when they granted their recent increases.

MR. BARRY: That is right, they decided it in other cases.

THE CHAIRMAN: They decided that some of the things the Provinces said were unjust and unreasonable were not so unreasonable, didn't they?

MR. BARRY: They said they did not have sufficient information to deal with certain aspects of it.

COMMISSIONER ANGUS: Mr. Barry, returning to Section 325 for the moment, do you think of your conditions (a) to (f) as really defining just and reasonable or as adding other conditions that must be satisfied?

MR. BARRY: I would say, defining just and reasonable.

COMMISSIONER ANGUS: Because it would be possible to think of it in this way, that there may be a number of just and reasonable rate structures any one of which is just and reasonable, but you will want them to take that one among those which sets aside these conditions best. Now, the other way of reading it is the one you have elected for, to say that it is part of the definition of just and reasonable itself.

MR. BARRY: That is right, sir.

THE CHAIRMAN: In itself?

MR. BARRY: It is a definition of just and reasonable that the Board at the present time does not find as their definition of it.

THE CHAIRMAN: You see, the Canadian Pacific are asking us to enact that no rate shall be just and reasonable which does not provide certain things for the Canadian Pacific Railway.

MR. BARRY: That is right, sir.

COMMISSIONER ANGUS: But you are really asking us to say that a rate is not just and reasonable if it has some sort of effect on the export trade or on the import trade of Canada?

MR. BARRY: No, I don't say that, sir, not as flatly as that.

COMMISSIONER ANGUS: It is one of your conditions?

MR. BARRY: It is one of the factors to be considered, but it would not make it, because it had some effect, thereby unjust and unreasonable, but it would be if they did not take them into account, it would be unjust and unreasonable.

THE CHAIRMAN: Well, does their mere taking it into account remove its unjustness or its unreasonableness?

MR. BARRY: If they obviously do, sir, in their judgment.

THE CHAIRMAN: Suppose they say they do find against you, then what?

MR. BARRY: We have to put some confidence in the Court that is deciding the question.

COMMISSIONER ANGUS: Then do you want them to say: Here is a proposed rate, part of the system, and taken in that system it is just and reasonable, but it is objectionable because it has an adverse effect on the export trade. That is one thing. The other is to say: Here is a proposed rate. It would be just and reasonable if it did not have an adverse effect on export trade, but since it has that effect it is not just and reasonable.

MR. BARRY: I do not ask that, sir. If it has the least possible effect, then it is just and reasonable, even though it has an adverse effect.

COMMISSIONER ANGUS: And still - -

MR. BARRY: It would be just and reasonable even if it had an adverse effect; it would not become unjust and unreasonable simply because it had some adverse effect on some of these factors, but if it had the least possible effect on some of them it might still be just and reasonable.

THE CHAIRMAN: You see, the Section now says that it shall be the duty of the Board to fix, determine and enforce just and reasonable rates. That is already there. Then in these things that you add it is not necessary to repeat "just and reasonable" each time. You say: "Provided that the Board shall in fixing, changing and enforcing rates, consider the following factors".

MR. BARRY: Yes, sir.

THE CHAIRMAN: You see, there is no necessity of dragging in each time the words "just and reasonable" because that is covered once and for all by the duty given to them there, the powers. Then you go on to say what those rates shall do, that in fixing their rates they shall consider this and that. However, that is only a verbal suggestion. I think we know the trouble that you have. If you wish to - -

MR. BARRY: I may have gone to extremes to try - -

THE CHAIRMAN: I am taking a man like Mr. French.

MR. BARRY: Yes, sir.

THE CHAIRMAN: I think we understand the difficulty there.

MR. BARRY: We don't wish to wait until a firm like that is compelled to go out of business because of increases.

THE CHAIRMAN: No, I know.

MR. BARRY: As Mr. Jones says, the C.P.R. requires so much more money which means an increase of approximately 20% again, which Mr. Fairweather says will go on traffic like Mr. French ships.

THE CHAIRMAN: All we can do is suggest the considerations which should guide the Board.

MR. BARRY: That is all I am trying to suggest, but your lordship prefers that it be in the Statute. I don't think it needs to be in the Statute.

THE CHAIRMAN: Oh, yes, that is our direction. We are supposed to make our recommendations in the form of amendments to the Act, not wise suggestions -- the Board could disregard them, but no Board could disregard the Act.

MR. BARRY: That is right, sir.

THE CHAIRMAN: That is what the Order-in-Council says, and I don't think there is any reasonable objection to making the Act much more specific than it is today because conditions are changing.

MR. BARRY: Apparently it requires to be more specific under the circumstances, although the Interstate Commerce Act is not nearly as specific as the one amendment I have suggested, and nevertheless the I.C.C. has taken all of those factors into account without being required in the Statute to do so.

THE CHAIRMAN: You mean they have said so in their judgments that they have?

MR. BARRY: The result of their rate fixing obviously has been based on these and similar factors.

THE CHAIRMAN: Have they said so? Have they said: "We have considered these things"?

MR. BARRY: Yes, sir, not those words.

THE CHAIRMAN: I know.

MR. BARRY: But they say they have considered competitive rate relationships without the Act being as specific.

THE CHAIRMAN: Then your principle complaint is against the horizontal increases?

MR. BARRY: That is it, yes, sir.

THE CHAIRMAN: Would you have us go so far as to enact that horizontal increases shall not be allowed?

MR. BARRY: No, I don't think that is possible.

THE CHAIRMAN: You don't think that is possible?

MR. BARRY: No, all-inclusive horizontal increases shall not be allowed, yes, sir.

THE CHAIRMAN: All-inclusive of what?

MR. BARRY: I suppose of commodities, sir.

THE CHAIRMAN: Yes, well, it is not an easy problem to solve, although we see what you want. The thing is to frame legislation so that the Board will have to comply.

MR. BARRY: It is difficult to take a middle course if one comes to putting in too few words.

THE CHAIRMAN: One would assume you need somebody's judgment of what is discriminatory and what is undue preference and so on. Well then, it is pretty hard to make legislation that would bind the mind, you know, of the person who is going to do the adjusting. Are you one of those who wish to retain the appeal to the Government?

MR. BARRY: That is right, sir.

THE CHAIRMAN: Not as the United States. We were told the other day what goes on there. It goes to the Supreme Court as a question of law, even going so far

as to have the Court hold that the decision of the Board is not in conformity with the evidence, and so on. You would not favour that?

MR. BARRY: Well, I would not go to the Supreme Court on the question of facts, on the reasonableness of evidence.

THE CHAIRMAN: Has somebody got the United States provision here, ready at hand?

MR. BARRY: The I.C.C. Act?

THE CHAIRMAN: Mr. Smith read it to us the other day. You see, when you go to the Government, of course you go back to another body and you have to persuade them that something is unjust or unreasonable.

MR. BARRY: Well, sir, if we look at it in the light of past history, I think the C.P.R. Brief (and I mention it here later) the C.P.R. Brief stated that of the fifty odd appeals only three of them were allowed and not in such a manner as to disturb the rates of the railways. It is in a sense a protection because, if, as some of the railway witnesses have said, railway rates could so disturb the economy of the country as to affect a lot of people, I feel the Government, the elected representatives of the people, should have the right to interfere, because the railway is such an integrated part of the economy that it would not be proper that the only interests to be considered were the revenue needs of the railway.

THE CHAIRMAN: I know nothing at all about the merits of this. Was it 54 appeals four of which were appeals that were allowed? At least that experience shows that there were only three allowed

MR. BARRY: That is right, sir.

THE CHAIRMAN: Only three times since 1903?

MR. BARRY: That shows it has not been used.

THE CHAIRMAN: Forty-seven years. Did the Government grant what was asked for by the appellants?

MR. BARRY: It has not hurt to have it there.

THE CHAIRMAN: No, but I mean, is it sufficient? I am on the other side now. You want to continue that way, do you?

MR. BARRY: That is right, sir. The fact that it was not used might have been all right, but the time may come when it will be used, if there is ---

THE CHAIRMAN: It has been used already, but I say the result is three appeals were allowed out of fifty-four, I think it was. Do you consider that is a satisfactory experience?

MR. BARRY: Well, it has not had any detrimental effect on anybody and there may have been beneficial effects from being in the Statute.

COMMISSIONER INNIS: You would not go so far as to say that major horizontal increases should be reported to Parliament?

MR. BARRY: I had not given that any consideration.

COMMISSIONER ANGUS: Would your proposed amendment make interim orders by the Board very difficult? if it could not increase rates without first satisfying itself that all these conditions were satisfied?

MR. BARRY: I think it would, sir. There may have to be a provision to allow interim increases if there was going to be a long drawn out hearing on the incidence of many rates, but that could easily be -- of course, the

Board has now the authority to grant the interim increases.

COMMISSIONER ANGUS: Well, I mean, your amendment would mean there would have to be something more to allow interim increases to be made without falling under these terms.

MR. BARRY: That is right, simply by adding the words that "provided the Board may make interim increases".

THE CHAIRMAN: Nobody has found that United States reference?

MR. COVERT: It is not in the Interstate Commerce Act, the provision for appeal.

THE CHAIRMAN: You have not it there?

MR. COVERT: No, I say, it is not in the Act.

THE CHAIRMAN: Well, Mr. Smith read something.

MR. COVERT: Well, he read from a text writer, my lord, that had taken the cases and showed how - -

THE CHAIRMAN: I think then he read what the Court considers.

MR. BARRY: That is right.

THE CHAIRMAN: That would do just as well for the present purpose if we had it, but you have not it here?

MR. COVERT: Yes.

THE CHAIRMAN: Have you it here?

MR. COVERT: You mean the evidence? Yes.

THE CHAIRMAN: We might just see it then.

MR. BARRY: Shall I proceed while Mr. Covert is looking for it?

THE CHAIRMAN: No, he can get it right away. Well, we won't take up your time. You go on till he has found it.

MR. BARRY: I wish to point out to you, Mr. Chairman and Commissioners, that both railways in their submissions agree as to the necessity of continuing the Maritime Freight Rates Act, and now that the principle has been recognized, and is easy of operation, we suggest that its benefits be extended. The only argument presented against the extension is that of the C.P.R. and they have opposed every provincial submission in any event, and ask for one thing only, more freight rates. No other person or corporation has appeared to protest against our proposed changes except the C.P.R.

It is not my impression that your Commission will recommend anything more than broad general principles and I am not therefore mentioning details of our attitude except to show that economically we require consideration and that it affects us greatly when as Mr. Fairweather states "the burden is being transferred to marginal producers".

Dr. MacIntosh has stated in his study of transportation for the Rowell-Sirois Commission that it may be necessary to meet part of the cost of transportation from general revenue of the country. He recognizes its importance as has every competent authority; all Governments have been concerned with its problems, as is evidenced by the Commissions which have investigated it and the money which has been spent on it by successive Governments. It cannot be judged on a purely commercial basis.

In 1945, 28.4% of the people of New Brunswick were employed in agriculture, and 8.1% were employed in lumbering and 13.3% were employed in manufacturing. That is why transportation changes affect us so greatly.

New Brunswick has little industry that the tariff

could protect and the tariff protective policy sacrificed the export areas like New Brunswick to the needs of the manufacturer.

THE CHAIRMAN: You say "export area". Just what do you mean?

MR. BARRY: Export area such as the Maritime Provinces.

THE CHAIRMAN: To export where?

MR. BARRY: Any place, whether at times by necessity to Central Canada.

THE CHAIRMAN: How could Canadian tariffs prevent you from exporting?

MR. BARRY: Well, because of, for instance, the change in the reciprocity policy with the United States and after Confederation and later since then the reaction of the United States to changed tariff policy in Canada.

(Page 22733 follows)

THE CHAIRMAN: So far as your exports are concerned, it is the customs tariff of other countries.

MR. BARRY: That is right, which is a result of our tariff policies or vice versa; it makes little difference to us. There is no free trade.

THE CHAIRMAN: Oh, no.

COMMISSIONER ANGUS: I suppose the suggestion is that the tariff increases costs.

MR. BARRY: That is right. It is mentioned right here in a quotation rights afterwards.

The tariff is not the cause of the economic difficulty of New Brunswick but it certainly worsened the situation. Now the present rate increase and the method adopted make matters worse.

I cannot do better than to quote from the report of the New Brunswick Committee on Reconstruction which was prepared under the Chairmanship of Dr. N.A.M. MacKenzie, now of the University of British Columbia and then of the University of New Brunswick as to the effect of national policies on New Brunswick.

"Protection (by the Customs Tariff) results in a much different kind of industrial development as export industries lose because their costs are raised by protection, and protected industries develop or expand because their prices are protected from foreign competition and there results a different distribution of capital and income than there would have been without it. It follows that the distribution of real income assumes a different pattern and existing inter-regional income disparities are heightened if the development of the protected industries is not spread uniformly throughout the nation."

THE CHAIRMAN: I rather gather that Dr. MacKenzie is a free trader.

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MR. BARRY: The report goes on to say that it is the income of farm and forest producers and those connected with immobile resources which will be adversely affected. Later the same report states "the effect of the tariff has been that the consumer in the export areas has paid a subsidy to the areas in which the protected industries developed."

THE CHAIRMAN: Does the word "area" there mean the whole of Canada?

MR. BARRY: Not the whole of Canada; an export area, for instance, the maritime provinces as compared with a manufacturing area like southern Ontario.

THE CHAIRMAN: I am just trying to get what Dr. MacKenzie means.

MR. BARRY: An area does not mean the whole of Canada.

THE CHAIRMAN: In his language, no. Is he talking of Canadian conditions?

MR. BARRY: He is talking of Canadian policies; Canadian trade and transportation policies.

THE CHAIRMAN: On, yes. He says: "...the consumer in the export areas has paid a subsidy to the areas in which the protected industries developed." I see. He is dividing the country into export areas and industrial areas, apparently.

MR. BARRY: An export area being clearly an area which has natural resources and oftentimes water availability for shipments, such as lumber, fish, forest products, agricultural products, minerals, and their prosperity being more dependent upon those resources than upon manufacturing.

COMMISSIONER INNIS: Would you go as far as to suggest that the existing rate relationship should be left undisturbed and that this distorted type of economy should continue?

MR. BARRY: No; I do not believe in distorting the

economy.

COMMISSIONER INNIS: It has already been distorted; and the distorted relationships which result from the distortion of it.

MR. BARRY: I say it should be corrected. What has happened in two rate increases has further distorted it and, to use Mr. Fairweather's words again, has further warped the economy. I would think that it would tend to further distress those areas which are normally export areas.

COMMISSIONER INNIS: I can see that. I was wondering how much farther you wanted to go.

MR. BARRY: I suppose we cannot reverse these policies over night.

COMMISSIONER INNIS: Unless by very painful means.

MR. BARRY: Sometimes painful means are worth it; the results may be worth it. But some people are not willing to pay the price.

THE CHAIRMAN: In so far as possible, you are seeking to be relieved by transportation conditions --

MR. BARRY: That is right.

THE CHAIRMAN: -- what you are suffering from from Customs Tariff conditions?

MR. BARRY: That is right; both Canadian and externally, those of other countries.

THE CHAIRMAN: Do you in any part of your brief say anything about this appeal to the government?

MR. BARRY: Yes.

THE CHAIRMAN: Then we are bound to come to it.

MR. BARRY: To continue:

Certainly we can readily see that industrial development did not spread evenly throughout the country. In fact, what little industry we have is threatened seriously by the cost of transportation. In normal times when our few industries

have to buy raw materials from great distances and ship the finished product into Ontario and Quebec for sale, the pull of Ontario and Quebec to settle there where the markets are, is very strong. That is how we lose our industry.

When we see an industry like Enamel Heating Company Limited of Sackville, New Brunswick, put under an additional handicap, when it is already laboring under one, it concerns us greatly. It is disproportionate.

THE CHAIRMAN: This Enamel Heating Company is under a handicap?

MR. BARRY: That is right.

We further submit that it is in the interest of the railways to give these industries preferred rates to enable them to stay in business at their present locations as if industry moves to its market and raw material source, then the railway gets little or no business from them as trucks then enter the picture. Actually, the rate increases will hurt both the railways and our provincial economy.

The C.P.R. Submission in Volume 1, page 145, states "Railways still have a virtual monopoly in Canada for long-haul movement of many bulky, relatively low value commodities."

The inference from that is that if more revenue is needed that is where they can get it. And it is those commodities which we sell, in part, at least, which using the railways of necessity, must bear the burden.

Horizontal Increases

It appears to New Brunswick that the evidence of Mr. French on behalf of Enamel Heating Products Limited, Senator J.G. Fogo, on behalf of Algoma Steel; and Mr. L.A. Forsyth, on behalf of Dominion Steel and Coal Corporation, definitely established the inequity of horizontal

increases on competing industries. The same principle applies to the effect upon primary producers, shipping long distances to markets in competition with near producers. Added to this is the fact that we must buy non-competitive manufactured goods from great distances. We have therefore suggested amendments to Section 325 of the Railway Act, requiring the Board of Transport Commissioners to take into consideration these factors and to require the Board to re-examine the incidence of the last rate increases. Consideration must be given to primary producers.

The C.P.R. claims that the horizontal method is the fairest. How is it fair when A's rate of 10 is increased by 20% to 12, and B's rate of 50 is increased by 20% to 60, leaving a difference of 8 to be absorbed by B, the fellow who can least afford it, at least in the case of the manufacturer and producer of New Brunswick. The I.C.C. does not agree with the C.P.R.

THE CHAIRMAN: These figures that are not percentages are what? Are they cents or dollars or what are they?

MR. BARRY: They could be anything. They are just figures taken because they are approximately the proportion.

THE CHAIRMAN: You say: "How is it fair when A's rate of 10 is increased by 20% to 12, and B's rate of 50 is increased by 20% to 60, leaving a difference of 8 to be absorbed by B, the fellow who can least afford it, at least in the case of the manufacturer and producer of New Brunswick."

MR. BARRY: He already had a difference of 40 to absorb.

THE CHAIRMAN: Have you any precise suggestion to substitute for that kind of an increase?

MR. BARRY: We suggested that amendment to Section 325.

THE CHAIRMAN: I am looking at the figures. What would

you like to bring about?

MR. BARRY: I would use the amendment to Section 325 and require the board to have maximum increases in such cases.

THE CHAIRMAN: Does your amendment use that word "maximum"?

MR. BARRY: No. I did not go into that detail. But that is the only thing the board could do, put a maximum on the increase as it was applicable under certain conditions.

THE CHAIRMAN: That is where your language about disturbing the rate relationships comes into play, does it?

MR. BARRY: That is right.

THE CHAIRMAN: The thing is to find language that is as precise as possible.

MR. BARRY: They use the maxima in the I.C.C.; and it does not say anything about maxima in the statute. But it is the only method they found whereby they could lessen the distortion.

THE CHAIRMAN: What is the language of the maxima provision? How does it run?

MR. BARRY: About the use of maxima in freight rates?

THE CHAIRMAN: Yes.

MR. BARRY: It is not in the statute.

THE CHAIRMAN: I say where it is ordered, what is the language used?

MR. BARRY: They allow an increase of 15 per cent with a maximum of 15 cents a ton on coal.

THE CHAIRMAN: That is to say, the increase is 15 per cent but never to exceed 15 cents a ton.

MR. BARRY: That is right. Sometimes it is 15 cents a ton; sometimes it is an increase of 15 per cent with a maximum of 15 cents per hundred pounds.

THE CHAIRMAN: Is that the sort of thing you think ought

to be applied in this case?

MR. BARRY: That is the only way that I see by which the board could lessen the disturbance, by using that method.

THE CHAIRMAN: You do not suggest that the Act direct them to use that method?

MR. BARRY: No; I do not think that is necessary. I do not think it is necessary to tell them that they must use that method.

THE CHAIRMAN: Are you willing to take the chance?

MR. BARRY: If they consider other factors; if the Act is satisfactory enough. Here is an ^{illustration} from the Interstate Commerce Commission report:

"All freight rates and charges will be increased thirteen (13%) per cent, except as hereinafter specifically stated in this appendix, and except that in the case of line-haul rates on the following commodities, in carloads, the increases shall be subject to the maxima indicated:

| Commodity | Maximum increase |
|--|----------------------------|
| Citrus fruits | 12 cents per 100 pounds... |
| Lumber and articles taking lumber rates | 8 cents per 100 pounds. " |

So there was a thirteen per cent increase, but a maximum attached to many commodities.

THE CHAIRMAN: Except in the case of coal, has our board ever applied the maximum?

MR. BARRY: Just coal and coke.

COMMISSIONER: Do you consider that changes in the price level affect this question? I mean, that the horizontal increase would be more objectionable if there had not been a general rise in prices than it would be if there had been a recent rise in prices?

MR. BARRY: I do not think it makes any difference. You

are referring to the C.P.R. theory of Dr. McDougall with regard to what they called the rubber dollar?

COMMISSIONER ANGUS: Yes, referring to it not necessarily, in its extreme form but suggesting that if there had been an increase in prices it might be a reason that meant you could come nearer to a horizontal increase than if there had not been an increase.

MR. BARRY: No, I do not think so.

THE CHAIRMAN: I think Mr. Jefferson said that.

MR. BARRY: Yes.

THE CHAIRMAN: Speaking of an Algoma shipper as compared with Hamilton shippers, he said that the price of the commodity steel has gone up anyway, so you are not losing anything but it. Is not that what he said?

MR. BARRY: That is what he said. He shows that we are better off even if we are paying twice as much freight;

that is under the formula in the C.P.R. submission. But then Mr. Forsyth, / ^{the} Dominion Steel witness or Mr. French of Enamel Heating says that the fact is that my freight rates will increase \$1 million and my competitors will only increase \$100,000. His steel went up. His labour cost went up, but my freight rate went up \$900,000 more than his.

THE CHAIRMAN: Then the argument is that there was a preference granted, say , to the Hamilton situated person as against the Algoma situated person.

MR. BARRY: That is what we say. But Mr. Jefferson and Professor McDougall say that because our price went up, we are really better off by any policy formula.

THE CHAIRMAN: I thought that was the only answer.

MR. BARRY: But the \$900,000 of our increase in freight rates as compared with \$100,000 rather refutes that there is a \$800,000 gain.

COMMISSIONER ANGUS: You would make no distinction between a case in which the cost of railway operation had gone up but other costs have not, and the case in which all costs have gone up, perhaps as in a big inflation by ten to one?

MR. BARRY: Consideration would have to be given to that, but it would not be the only factor. It could not be ignored. Consideration would have to be given to that, Dr. Angus as you suggest. But I think consideration should not be given to that alone, as has been the practice, but should be given to rate relationships as well.

COMMISSIONER ANGUS: What I was suggesting was not in its extreme form.

MR. BARRY: The illustration used by the C.P.R. is perhaps an extreme one.

(Page 22743 follows)

MR BARRY: At page 14, sir:

The dollars and cents paid -- I was discussing that with Dr. Angus --refute the C.P.R. claim. The fact that in the United States 4.5 to 5 billion paid for freight out of 7.5 billion moves on exceptions to the horizontal method also refutes their claim.

THE CHAIRMAN: When you say exceptions, do you mean moves on maximum?

MR BARRY: That is right, sir. There are exceptions, increases.

COMMISSIONER ANGUS: Are not some of those horizontal but at a lower rate?

MR BARRY: That is right, sir, and some are not subject to any increase as well.

THE CHAIRMAN: Still, even if the rate is lower, they are horizontal.

COMMISSIONER ANGUS: They are exceptions to the uniform horizontal method.

MR BARRY: That is right, sir. They may be in flat amounts and cents per hundred pounds; they may be in percentage, cents per hundred pounds, or on maxima.

COMMISSIONER ANGUS: Like on coal.

MR BARRY: That is right, sir.

The I.C.C. has long recognized that if increases are not to have an adverse effect upon producers and industries, exceptions must be made. Even the Railways recognize this in the case of coal.

See Exhibit 266 p. 20022 Vol.109 to illustrate proportion of freight moving in the U.S. on exceptions.

The Duncan Commission recognized the unfairness of this method and so did the Jones Commission, both of which are quoted in the Appendix to Exhibit 50.

A further argument against them is the very fact that the two provinces who are least affected by them do not even protest. Let the C.P.R. answer the glaring fact that the so-called long haul provinces are here protesting on behalf of both manufacturers and primary producers and that the industrial Central Provinces are not. There is only one answer. The method is inequitable.

There is then a paragraph about the amendment in connection with increasing the percentage and making it inward. We have discussed that, so I will not read it, Mr. Chairman.

We have also suggested that the rate of reduction under the Maritime Freight Rates Act be increased to thirty percent, and that it be made also to apply to inward movement of goods at least on that part of the movement within the select area, so-called. This is designed to ease the burden on the consumers and processors of imported material to compensate them for the trade policies which require the use of certain transportation agencies. It may be that the whole Act may have to be redrafted but I have suggested changes which would attain the result.

THE CHAIRMAN: Do you mean by that, Mr. Barry, that nobody before us has supported the horizontal method except the railways themselves?

MR BARRY: That is right, sir.

THE CHAIRMAN: That is what you mean?

MR BARRY: Yes.

COMMISSIONER ANGUS: The taxpayer is not represented by counsel at these hearings.

THE CHAIRMAN: Can't afford it.

MR BARRY: There are other places, I suppose, he is not represented as well, sir, but they may be like the

postcard he should have sent to him.

New Brunswick supports the argument of the Province of Nova Scotia in this matter and points out as forcefully as possible that the Board of Transport Commissioners, with the added staff which it should have, must be instructed by legislation to take these matters into consideration and not to take the path of least resistance.

It is most inequitable to find that in those provinces which freight rates do not affect, and where high value industrial goods could bear the burden easily, the railways cannot raise the rates, they claim, because of competition. Certainly it is not the fault of the other provinces that the railways find themselves in this situation and it might even be said that the railways, in part, at least, are responsible for this situation. It must also be remembered that it was always open to the railways to go into the trucking business, but it appears that it may be too late now for them to do so. But we point out that this problem may be overestimated as Mr. Fairweather said at Vol.110 p.20181 that for taking 10% of the freight, the truck received 23% of the revenue but he could not say that if trucks were controlled economically just how much of the revenue the railways would recoup. The privately owned vehicle will always be the problem here as in other countries.

LONG AND SHORT HAUL RULE

New Brunswick does not propose any amendment to the long and short haul rule, but it cannot support the amendment proposed by the Province of Alberta in Volume 108, p. 20007.

THE CHAIRMAN: What is that amendment we were discussing the other day?

MR BARRY: It is not on critical relationships,

sir. That is the amendment that brought into existence the fact that the rate to Calgary was \$2.40, say, and the transcontinental rate was \$1.00.

THE CHAIRMAN: You say you do not support it?

MR BARRY: That is right, sir, not as it is presently framed. I appreciate the problem of Alberta, as far as having a rate that is more to Calgary than it is from Toronto to Vancouver and back to Calgary, that that seems most inequitable; but to require a railway, before putting in a competitive rate, to prove actual and compelling competition we feel is too extreme, because it would have an adverse effect upon our rates as well. I discuss, sir, the reasons for that in this.

This amendment would require the railway desirous of putting in a competitive rate, or desirous of retaining an existing rate, to prove "actual and compelling competition." Nowhere in the I.C.C. Act or here, is such a burden placed upon the railway.

Let us suppose that a shipper in Saint John, desirous of making regular shipments to Montreal in the summer time, approaches the railway to get a rate and the railway desires to give him a rate in order to stop him from using water transportation. The rate might of course be lower than for a shorter distance from an intermediate point. The railway would be unable to show "actual and compelling" competition and couldn't give the rate and would therefore probably lose the business. Then the competition would exist but the business would be gone.

Certainly the word "potential" would be sufficient and I do not think that the railways are deliberately giving away unnecessary low rates, certainly no lower than they must to keep the business. In any event, other amendments requiring the staff of the Board of Transport

Commissioners to check and examine competitive rates and to see that they are compensatory should accomplish the same purpose.

THE CHAIRMAN: Pardon me a moment. I want to make sure that I understand you there. You say:

"In any event, other amendments requiring the staff of the Board of Transport Commissioners to check and examine competitive rates . . ."

Do you mean before they are effective?

MR BARRY: No, sir. There were amendments proposed by Manitoba and Saskatchewan with respect to that, and Alberta as well.

THE CHAIRMAN: Were we not told sometime ago about how many competitive rates there are in the country, by some mass statement or other?

MR BARRY: In terms of millions of rates, sir? I do not think the competitive rates are.

MR EVANS: Thousands.

MR BARRY: Thousands of competitive rates. I do not mean to have them examined before they are put in, sir, but the task of the Board would be a continuing one.

COMMISSIONER INNIS: The word "potential" is not good enough for you, Mr. Frawley?

MR FRAWLEY: I was just telling Mr. Covert, that is all explained in my argument, what I mean by "potential".

MR BARRY: I heard Mr. Frawley's argument, and Mr. Frawley says in the United States they take into account potential competition, but I do not think the wording of Mr. Frawley's amendment will allow them to take into account potential competition. The word "actual" is not used in the I.C.C. Act. I think that is an explanation of the use of the words, although Mr. Frawley argued that it would be quite proper for them to consider potential as being sufficient,

but if so the word "potential" would be sufficient to me, and I would have no objection to the amendment.

THE CHAIRMAN: Anyway, you think the Board should have a staff that would check in advance on competitive rates and see that they are compensatory?

MR BARRY: That is right, sir. They are amendments proposed by the western provinces.

THE CHAIRMAN: But without holding them up.

MR BARRY: Oh, I would not hold them up, sir.

SPECIAL RATES AND AGREED CHARGES

New Brunswick does not support any legislation which is designed to prevent the railways from putting in rates of any kind to meet competition. It appears to us that the railways should be allowed in their own discretion to put in special rates or agreed charges if they desire, leaving it to their own business judgment to decide whether they are required or not. They could, of course, be subject to legislation being proposed whereby the staff of the Board of Transport Commissioners could always examine them as to their compensatory nature, as I have already said, and as to their necessity but pending such examination by the Board, on its own motion or on complaint, the rates would be in effect. It is appreciated that today's competitive situation requires that the railways be able to act quickly. More consideration might be given to easing their controls except on long hauls where no real truck competition exists. However, it is probably always a matter of conjecture as to the compensatory nature of a rate and situations can be assumed very easily where non-compensatory rates in the furtherance of national policy might be justified. Judging from the position of the Newfoundland Railway, very few of its rates are compensatory, and any restrictive amendment would apply

to them also.

THE CHAIRMAN: Is that established? You say very few rates are compensatory.

MR BARRY: I speak, sir, from the publication of the anticipated deficit by the Canadian National Railway. There must be very few of them that are compensatory.

Management, to be efficient, must have a discretion.

C. N. R. CAPITAL REVISION

New Brunswick supports the capital revision proposal of the C.N.R. and feels that the position of the C.N.R. should be improved by providing some compensating factor for the lines which have been added to the system as developmental lines, and others acquired and operated in the national interest. The fact that the Government is not able to judge the necessity of those lines on a pure dollar and cents basis is further proof that railways are so essentially a part of national policy that it is impossible to regard them as purely commercial operations.

It is my understanding that the Government and the Canadian National do not want to again separate the accounts of the various railways in order to show the subsidies necessary to pay the deficits incurred annually in operating these lines. Therefore, unless the C.N.R. is to more or less give the appearance of inefficiency by continually having these deficits, then some method must be devised and put into effect as suggested by the C.N.R.

As to the charge by the C.P.R. that this plan would have a detrimental effect on the C.P.R., New Brunswick is quite content to accept the assurances of the financial witnesses of the C.N.R. that no adverse effect would result to the C.P.R., subject to investigation by your Commission

staff.

It is not intended that the public treasury should be used to put the C.P.R. out of business. One cannot judge the C.N.R. as a purely business proposition. Some assistance must be given to it because of the task it performs in the national interest. It appears that the creation of the 300 million dollar fund was proposed to compensate the C.N.R. for losses on low traffic density lines.

It appears to us that accountants of this Commission, taking into consideration the factors involved such as railway property investment and deficit lines, could reconstruct the capital structure of the C.N.R. in such a way that no detriment could result to the C.P.R.

THE CHAIRMAN: Now you are talking about the C.P.R. also. What is your attitude toward the C.P.R.? That is should continue as a private enterprise?

MR BARRY: I have no instructions otherwise, your lordship.

THE CHAIRMAN: That is as far as you can go?

MR BARRY: That is right, sir.

UNIFORM ACCOUNTING AND STATISTICAL PROCEDURE

The Province of New Brunswick supports the amendments proposed by the Province of Saskatchewan and Manitoba requiring the Board of Transport Commissioners to set up a uniform system of accounts and statistics. It has been seen, both here before your Commission and before the Board in rate cases, that it is quite impossible for either the Provinces or the Board to compare efficiency and requirements of railways. Therefore, the system to be set up should, as suggested, set forth the depreciation method, the rate of depreciation, and also require segregation of assets. All utility authors and regulatory tribunals have

found it necessary to require a uniform system of accounts and an examination of both English and American authorities will confirm this matter.

These were referred to by Mr. Smith, and I won't go into them again.

We do not express any preference as to detail, but the attitude of Mr. Cooper of the C.N.R. with respect to detail appears to be fair. But N. B. assumes that any details will be laid down by the B.T.C. if this Commission recommends a uniform system and Parliament adopts a law requiring the B.T.C. to set up a uniform system of accounts for railways.

GRADE CROSSING LEGISLATION

The amendments proposed by the Railways with respect to Grade Crossing Elimination are satisfactory except in the following respects. The C.N.R. amendment to Section 259 s.s.2 limiting the share to be paid by the Railway to 50% of the difference between the amount paid out of the Fund and the total cost or (important) the capitalized value of the benefits accruing to the railways whichever is the lesser. This is not equitable because the railway does have some responsibility.

Section 262, s.s.5, allows the Fund money to be used for maintenance and operation of separations. New Brunswick feels that the maintenance and operation of all separations or signal devices should be provided for by the railway.

It is further suggested that the works to be performed, should of necessity, include electric signal devices.

As to both sets of railway amendments, New Brunswick feels that where the Crown is to be made liable, then the proviso should be added to Section 259: "But in no event

shall the share of the total cost of such work which the Board shall order to be paid by the Crown in the right of the Province and/or by a municipal corporation, exceed (10%) ten percent of such work."

The New Brunswick brief suggested a 70% payment by the Federal Government, 20% by the railway concerned, and 10% by the province or municipality concerned.

The necessity for some planned scheme to eliminate the unnecessary loss of life which occurs daily is obvious. It is in the national interest and the railways have an obligation to take steps to eventually cure this situation in a progressive plan.

THE CHAIRMAN: What about the cost? Have you anything to say about the figures we were given, the amount it would cost to do what you want?

MR BARRY: Well, I speak of a progressive plan, sir. I see that there is a bill which was given third reading in the House within the last two or three days, increasing the amount in the grade crossing fund to a million dollars a year. Apparently the Government is taking some cognizance of the necessity of it now. It was increased from five hundred thousand dollars to a million just last week.

APPEALS TO PRIVY COUNCIL

New Brunswick opposes the amendment proposed by the Canadian Pacific Railway with respect to appeals to the Privy Council. We might not have this Royal Commission if their suggestion was the law and it appears to us that railways and freight rates are of such importance to the Canadian economy that it is not only the interest of the Canadian Pacific Railway which has to be taken into consideration but the interest of all of the people.

THE CHAIRMAN: Of course, the Government can appoint Royal Commissions.

MR BARRY: That is right, sir. I say we may not have, but this Commission I feel is one result of the appeals.

COMMISSIONER INNIS: Do you expect us to look on that favourably?

MR BARRY: Well, the provinces do, sir.

THE CHAIRMAN: I do not see the necessary connection. The seven provinces asked for two things. First they appealed against a certain judgment of the Board, and secondly they asked for the appointment of a Royal Commission.

MR BARRY: That is right, sir.

THE CHAIRMAN: Well, the Government could grant that any time, no matter where---

MR BARRY: That is right, they could, sir, but it is my opinion that it might not have been so if that provision for the appeal had not been there.

THE CHAIRMAN: Did it ever occur to you as an objection to the present appeal that those who appealed were the owners of one of the railways? The Government of Canada owns the C.N.R., doesn't it?

MR BARRY: That is right, sir.

THE CHAIRMAN: And then you appeal to the Government of Canada against the---

MR BARRY: Well, objectionable from whose standpoint, sir?

THE CHAIRMAN: I mean, you are appealing to one of the railways asking to have its own rates reduced, are you not?

MR BARRY: Well, sir, that would mean normally that they would be prejudiced against us, owning one of the railways, but we are still satisfied to appeal to them.

THE CHAIRMAN: I see. Have you ever considered that? It may seem a little anomalous to have an appeal to

the owner of a property against himself, his own interests. Well, I guess you have not.

MR BARRY: I am speaking from the experience as referred to in the various briefs, that it has apparently worked out satisfactorily. I have not heard any province yet say that it should be eliminated.

MR FRAWLEY: Your lordship knows that Mr. O'Donnell was there against us on that appeal.

MR O'DONNELL: All I would say to that is that His Majesty, the owner of the railroad, and the Governor in Council are two different entities in law, as far as that is concerned.

THE CHAIRMAN: No, they are not two different entities. You cannot divide the Crown.

MR O'DONNELL: Is the Governor in Council necessarily the Crown?

THE CHAIRMAN: Yes; the Governor represents the King.

MR O'DONNELL: He advises, yes.

THE CHAIRMAN: And his Cabinet advise him.

MR O'DONNELL: That is right.

THE CHAIRMAN: That is the Crown, in the right of the Dominion of Canada. Of course there is also the Crown in the right of each province.

MR O DONNELL: That is right.

THE CHAIRMAN: However, you do not mind that, Mr. Barry?

MR BARRY: No, sir, we have no complaint.

THE CHAIRMAN: All right.

MR BARRY: The amendment of the Canadian Pacific Railway in this matter, as in most other matters, is designed, not in the interest of the public, but in the interest of the Canadian Pacific Railway. I do not blame

the officers of the Canadian Pacific Railway for that, but it shows the difficulty of a private company in this situation and the necessity of regulating such a company in quite a rigid way. If it were not so done, imagine the effect upon the public. If the Canadian Pacific Railway's submissions are taken as reflecting their attitude, then let us suppose that there was no appeal and they were uncontrolled. Immediately rates would go up horizontally at least 15-20%, and I think that is a minimum. No other income would be considered. The interests of primary producers would not be given due consideration as the first interest of the officers of the Canadian Pacific Railway is the Canadian Pacific Railway revenue. Therefore, many safeguards are necessary including this appeal. The provision was not put there carelessly and it should not be removed, just because the Canadian Pacific finds it embarrassing. The Canadian Pacific Railway's submission states at page 147 that of fifty appeals -- it is approximately fifty-four, I think -- already made, only three were allowed. But this shows that the power has not been abused and it is a safeguard.

POWERS AND DUTIES OF B.T.C.

Many amendments have been suggested by various provinces with respect to the B.T.C. and the Province of New Brunswick supports the amendment proposed by Saskatchewan in this matter. It is the contention of New Brunswick that the Board should have a greatly enlarged staff, that it should have a constant supervision of its own motion over all rates and that it should consider many other factors in making rate changes that it does not now consider.

THE CHAIRMAN: The recent appeals to the Privy Council, have we copies of the orders made?

Go on, Mr. Barry.

MR BARRY: It is suggested here that the system employed by the I.C.C. in the United States could be well employed by the Board here and all officials of the Board in the course of their employment should have authority to examine the accounts of any railway and to enforce a uniform system of accounting.

The amendment proposed by New Brunswick would require the Board to consider, in rate changes, the many factors involved, most of which they do not now consider. It appears to us that there is only one factor now considered by the Board, and that is "How much money does the C.P.R. need", and we strongly suggest that many other factors should be taken into account and we have set some of them out in the amendment to Section 325. This is in line with Section 15(a) of the I.C.C. and referred to in argument by the Province of Nova Scotia.

I also mention the proposals about the recent increases and the horizontal increases:

We also have proposed that the Board, in the light of new legislation, be required to examine the incidence of past increases in the light of new guiding policies because otherwise the burden will stay where it is and rate relations will be disrepted.

We feel that the evidence referred to-herein, under horizontal increases, shows very well that the Board does not give sufficient consideration to many of the economic effects of their decisions.

We cannot support the amendment of Manitoba re compensatory rates not being allowed except as to developmental lines as there are many cases in which certain rates might be put in effect in the national interest, for instance to carry goods through Canadian Ports.

COMMISSIONER ANGUS: You mean non-compensatory,

don't you?

MR BARRY: Non-compensatory, that is right.

THE CHAIRMAN: I asked somebody to find me an Order in Council; I have it here.

Where are you, Mr. Barry.

MR BARRY: At page 23, sir, at the top.

Referring to Manitoba's suggestion that non-compensatory rates be not allowed, that that is too restrictive, and that there are many cases where in the national interest they were put in to carry goods through Canadian ports, as being one instance of it, we have said earlier and say again that we do not wish the railways to be prey to all competition and we must trust to managerial judgment in the railways which has been of a superior nature until now and probably will continue to be so. It is fair to assume that the railways are not giving away money. We say the same concerning the other restrictive amendments proposed by Alberta.

(Page 22758 follows)

AMENDMENTS TO MARITIME FREIGHT RATES ACT

I do not propose to deal with the amendments to the M.F.R. Act already dealt with by the Maritime Transportation Commission and by Nova Scotia. As I support them entirely, I leave their arguments for the Commission. As I said, I support them, the amendment to Section 325 as an alternative to that of New Brunswick, and the other amendments as a means to again put the Maritimes in the comparative position in which they were intended to be. Developments in connection with competitive rates, due in part to the development of trucking, have in great measure caused the Maritimes to lose its intended assistance. In other words, competitive rates in the central provinces have enabled competing producers to ship to market at comparatively less cost than in proportion they were intended to be able to do and as a result, without truck competition in the Maritimes, we have been placed in a position of having a less net return to both the primary producer and the manufacturer.

We are competing with producers and manufacturers whose rates, apparently cannot be raised and we are shipping from one of those regions according to Mr. Fairweather, where the export rates out of New Brunswick can be raised. Our net return was lower before, now it will be still lower and will worsen as rates increase. This applies to us both as producers of natural and manufactured products, and as consumers of other non-competitive products.

The amendment to the M.F.R.A. proposed by the C.P.R. is objectionable to us. We do not see that such is necessary in order to have equalization of rates, in fact we believe that such (meaning equalization) is

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technically impossible, unless we have such a perfectly balanced economy that it will be equally absorbed by the community at large and such does not appear to be possible. It is true that under the M.F.R.A. we do receive a reduction, but that is not at the cost of the railways. The public treasury absorbs that amount. It is absorbed by those who, in accordance with our government's policy, have the ability to pay. The west proposes equalization, but it must be remembered that, if the Crows Nest Pass Rates are non-compensatory, which I will not presume to decide, then the West is subsidized by those other freight shippers and not by a subsidy from those who have the ability to pay, but by everybody who has to use the railways to ship freight. And not only that, but subsidized by those people who can least afford to pay, if those rates are non-compensatory.

THE CHAIRMAN: Pardon me a moment; what is the amendment proposed by the C.P.R. in this connection?

MR. BARRY: It is an amendment that would permit the Board to adjust and vary rates up and down irrespective of the cost of operation, in order to achieve equalization between East and West.

THE CHAIRMAN: Just a moment now --

MR. SINCLAIR: It is not in that list, my lord. That list is headed "Additional Amendments". It was put into the record from the proceedings and of course it will be discussed during our argument.

THE CHAIRMAN: You will have to remind me what it was then.

MR. BARRY: It is an amendment which will permit the Board -- whereas now they may only vary rates upwards, that is the preferred ones, by reason of changes

in the cost of operation, it was the contention of the C.P.R. that equalization would not be possible unless that section were changed to allow the Board to vary them for the other reason.

THE CHAIRMAN: What section is it?

MR. SINCLAIR: 325.

MR. BARRY: Mr. Sinclair said it was 325. It is ~~32~~(b), the latter part of it reading that -

"while the cost of operation in Canada remains approximately the same as at the said date, the Board may allow the increase or reduction of such tolls or tariffs from time to time to meet increases or reductions as the case may be in the cost of operation."

The amendment of the C.P.R. is that --

THE CHAIRMAN: In the first place you are in favour of increasing that 20 to 30, are you?

MR. BARRY: That is right, sir.

MR. SINCLAIR: We were to add there, my lord, at this point if you wish -- after the word "time" -- "adjust and vary tolls or rates from time to time". We add these words.

THE CHAIRMAN: After "from time to time"?

MR. SINCLAIR: Yes, we add these words: "as may in the opinion of the Board be necessary to give effect to any general readjustment of rates in Canada or".

MR. BARRY: Continuing the same words.

MR. SINCLAIR: Continuing the same words to the end of the section, yes.

THE CHAIRMAN: You are opposed to that?

MR. BARRY: That is right, sir. We have not spoken to any proposal as to equalization, nor do we think such an amendment is necessary to achieve it; that

it is quite possible to achieve it even with the Act as it is, and I don't think my friends of the Canadian Pacific are absolutely satisfied that the Act is essential.

MR. SINCLAIR: Well, we shall discuss it when we are arguing our case. The reason why we put it in is because the Provinces have taken the position, the Maritime Provinces, that you cannot alter or vary the rates unless you prove under this section that costs have changed since 1927. Of course, on equalization, it would not be based on equalization, and I think it is essential and will so argue it, if we are going to have equalization, because we would have to vary the standard and class rates in the Maritime Provinces.

THE CHAIRMAN: Of course we will hear from you later on the point.

MR. SINCLAIR: Yes, my lord.

MR. BARRY: I do not assume that the Crows Nest rates will be varied and possibly the subsidy will not be paid, but somebody pays the extra cost, if they are non-compensatory, and it is only fair that such subsidy should not fall on a selected few. Mr. Matheson has estimated on a 1922 basis alone, that the railways would be receiving at least \$33,000,000 more than at present if rates were left as they had been, let alone not increase them as other rates have been increased. We do not suggest any change in Crows Nest rates but possibly the Government should absorb any extra cost rather than shippers and consumers generally.

I have also proposed an amendment which would give the Province of New Brunswick a reduction on inward freight. This would result in less cost to the consumer of certain goods. While objection may be made in some quarters to this proposal, it is my experience that not one

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producer or manufacturer in the province of New Brunswick objected to this procedure. In addition, it is estimated, on the basis of present cost of the M.F.R.A. that its cost would not be great. It would certainly be nothing compared to other subsidies presently paid by our Dominion Government on certain commodities, and a little goes a long way in the Maritimes.

The measures proposed, namely, increasing the percentage reduction to thirty percent and making it both in and out as well as within, would go far to lessen the incidence of the recent increases. It would not by any means restore the situation, but it would help restore our comparative position. An examination of the figures presented by Mr. French of Enamel Heating, however, would clearly show that in any event, we would still be worse off.

The Intercolonial Railway was intended to be, and was built, as a means to get us into an alternative market to that which it was known we would lose. It was based on national policy, and as has been decided and was known when it was built, it was never intended to be operated as a commercial proposition. We have been dealing with commercial propositions here but I point out to the Commission, confirmed by Section 145 of the B.N.A. Act and by the Duncan Commission and the Jones Commission, that never was the I.C.R. intended as anything more than a means to compensate the Maritimes for that which they were going to lose upon entering Confederation and the gain made by Canada in the acquisition of the Maritimes, would be paid for from public funds.

If our standard of living compared to the national average, or was higher, it could be said that we did not need assistance. I think it is clear that our standard is

much lower. Therefore, let us have the assistance which we were intended to have and do not let new circumstances, recently developed, deprive us of that which the powers intended and were willing to give us and would still give us.

REGULATION OF TRUCKING

The Railway Association has proposed a drastic means of regulating trucking in its brief, but it is to be pointed out, they have not shown any place where it could be done or where it has been done. Both a C.N.R. witness and Dr. Locklin agree that it does not seem to be feasible. It is not a matter of stating that the Provinces will not give up their rights. In fact, only one province has expressed a willingness to do so and in that event, I assume that most of the other provinces are not willing to surrender their rights. New Brunswick is not willing to do so, but is willing to co-operate in any measure which will alleviate the situation and bring about a uniform measure of control. The provinces wherein competition exists in extreme degree have not appeared here and we must assume that those Governments will not surrender their rights.

But let us assume that the Provinces were willing to surrender that right. It has certainly not been shown that control can be exercised and the question becomes an academic one when it is more or less agreed that even if they did surrender their right, nothing could be done about it. It was patent during the war when the government tried to put a 25 mile limit on trucks and were forced to abandon it. At that time we had a situation where the constitutional aspect did not enter and still it could not be done. It is physically, economically, politically and practically impossible to tell a truck owner what he shall

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do, where he shall go and what he will charge in using his truck. It is to be doubted, in any event, that even if New Brunswick would surrender their trucking control, that it would help the railways to any extent as it is not in New Brunswick that such real competition exists.

It may be suggested that private trucks be not controlled although Mr. Gaffney felt that they must be controlled as well. That was tried in Britain and in a short time, all, or nearly all, trucks became privately owned. How can one tell a manufacturer that he cannot buy trucks and ship his produce in his own vehicles. It is not possible.

A more sane approach, albeit a difficult one, is that expressed by other authorities, namely, make the truck pay its share of the cost of the right of way on which it operates, and the railways will be in a better competitive position. The Chevrier Commission apparently endeavoured to assess this cost of contribution and arrived at certain conclusions about 1932, but as the cost varies with the province, it is difficult to assess, but New Brunswick is willing, on this basis, to contribute to the solution of this problem.

It is important to consider, however, in a democracy, whether or not the simpler method of operating the railways by subsidy, without controlling trucks, is not politically more advisable, even if at times it does not appear to be economically more advisable.

The experience of other nations as well as of witnesses before this Commission, indicates that it has been found impractical to endeavour by regulation to control trucks. The complete attitude of the Province of New Brunswick on this matter has already been expressed in replies to questions sent out by Commission counsel. I add,

however, that subject to existing provincial laws, New Brunswick has no objection to trucks of the railways going into the trucking business. The field is available to them if they comply with provincial Licensing regulations.

In any event, the two provinces in which the railways are most adversely affected, are not represented here and we do not know the attitude of those provinces in which such a high proportion of our Canadian population resides.

RATE BASE, RATE OF RETURN

AND

C. P. R. AS A YARD-STICK

The C. P. R. has proposed an amendment called Section 325 s.s.7, in which it would be necessary that just and reasonable rates should take into account a fair return on railway property of the C.P.R. and would authorize the Board to establish a rate base.

THE CHAIRMAN: Just a moment, let me get that amendment.

MR. BARRY: It is the proposed sub-section 7 to 325, sir.

THE CHAIRMAN: Yes, it says that rates shall not be deemed just and reasonable unless taken as a whole they are sufficient to provide a fair return upon the investment on railway property in the Canadian Pacific Railway Company and the Board may from time to time determine the investment in railway property upon which the return is to be calculated and the rate of such return. That is all there is to it.

MR. BARRY: That is right, sir. While there is nothing objectionable in the principle involved in this amendment, New Brunswick considers that such a method would be too rigid in the national interest, and in any event, the principles set forth therein undoubtedly

govern the Board of Transport Commissioners at the present time.

It took many years in the United States to determine railway property investment and the I.C.C. did not determine it on individual railways, but on railways as a whole, and it is our understanding at the present time that it is only one of the factors which the I.C.C. takes into consideration in determining rates, as their experience found that it was too rigid. We therefore oppose this amendment in its form as being unnecessary because of the fact that the revenue needs of the railways must be taken into consideration in any decision and it is unnecessary to direct the Board to do so by any particular method. Our amendment mentions it as one of the factors.

It is suggested that once a uniform system of accounting has been developed and proper comparisons can be made, the question of rate basis and rate of return might then be considered, but it certainly could not be considered until much information of a very detailed nature was made available to the authorities, and at the present time the Board of Transport Commissioners does not have the technical staff necessary to make such investigation. If we can judge by I.C.C. experience, a ratebase has been found unsatisfactory.

With respect to the proposal that the C.P.R. be the "Yard-Stick" in the making of rates, it is further suggested that such should not be done by statute, especially before a uniform system of accounts is set up. It could be possible, after the C.N.R. capital structure is revised to put it in a comparative position, that it would be found that the C.N.R. cost of operation was less, in which event, it would be unreasonable to

accept a higher operating cost railway as the yard-stick.

THE CHAIRMAN: Just a moment, what you are saying there seems to be important. You say that it could be possible, after the C.N.R. capital structure is revised, to put it in a comparative position, (whatever that means) that it would be found that the C.N.R. cost of operation was less, in which event it would be unreasonable to accept a higher operative cost railway as the yard-stick. What would you do with the higher operating cost railway?

MR. BARRY: They would just have to get more efficient and cut down their cost of operation. Assuming the railways to be in comparative position as to railway property investment and taking account of income tax differences to be paid by the C.P.R., that it may be found that the C.N.R.'s cost of operation will be less.

THE CHAIRMAN: The comparative position, you mean is comparative as to capital structure?

MR. BARRY: Railway property investment, and making due allowance for income tax and taxation and things which the C.N.R. does not have to pay and the C.P.R. does have to.

THE CHAIRMAN: Then if you have two railways then the cost of operation of one (of course they would not be exactly the same), one is higher than the other -- to take the needs of the lesser one?

MR. BARRY: Yes, sir, if the country could not afford to maintain the higher one.

THE CHAIRMAN: All right, you would make that your principle?

MR. BARRY: That is right, sir. It is another example of a situation where it would be unwise to restrict the discretion of the Board. It would also make the Board simply computers.

The Supreme Court of the United States has,

with all the cases before it, now decided that no single factor can be the governing factor in rate-making. Local utilities are not comparable to railways. All things, customers, rates, shippers and investors are considered. But a rate base is a factor only. It is conceivable that in a depression no increase would be granted because of the effect on the economy, even if the investor received no return.

According to Mr. Northey Jones' figures, as applied by people interested, to make the C.P.R. a yard-stick on a rate base method would increase the rates 24%. (Some people say it is 20% but it is approximately 20%). We could not stand for that, nor for any measure which would make it possible.

FEED - GRAIN ASSISTANCE

New Brunswick respectfully submits that the Feed-Grain Assistance policy should be continued as it is upon the basis of this assistance that a poultry industry has been developed in certain sections of New Brunswick. We are not exporters of these products, but without this assistance, this domestic industry could not survive and its abandonment would disrupt the economics of poultry farming and have an adverse effect upon the economy. This Federal policy has been of very great assistance to the Province of New Brunswick.

CONCLUSION

New Brunswick has set forth in its submission to the Commission (Exhibit 50) just how high freight rates have effected our economy, especially where freight bears such a high proportion of the selling price of our important primary products. We have also shown that

our standard of living is much lower than the national average, and certainly lower than those provinces which do not have to pay substantial freight increases,

The conclusion is inescapable, therefore, that to allow the burden to fall on one of the poorer sections of the economy will further depress that economy, both by reducing the net return on exports and adding to the cost of imports.

Therefore, we have suggested increasing the percentage under the Maritime Freight Rates Act to thirty (30%) percent, and further, to make the Maritime Freight Rates Act applicable to goods shipped into the Maritimes within the select area. We have further suggested in amendments to Section 325 of the Railway Act that the Board of Transport Commissioners could consider many factors in rate changes which they do not now consider and examine the incidence of rate increases granted in the last two years.

These suggestions are only aids in relieving the burden and will not permanently solve the problem, but they could materially assist. We would still be paying more freight than ever, but not quite as much as we would without these amendments.

The Inter-Colonial Railway was built to assist us and to provide alternative markets for us, and it is not to be considered as a commercial proposition and was never so considered. The Duncan Commission stated that commercial considerations were subordinate to national considerations, and on this basis lower rates should be provided for us. The Duff Commission as well, recognized that the I.C.R. was a national undertaking, constructed in the broader considerations of public policy.

Therefore, it is respectfully submitted that in the national interest, the burden of the recent rate increases must be eased to avoid a further depressing of our standard of living.

To quote the Duncan Commission (p. 21):

"The purpose of the Inter-Colonial was to afford to Maritime merchants, traders and manufacturers a market of several millions of peoples instead of their being restricted to the small and scattered population of the Maritimes themselves, particularly in the light of the disturbance with which their trade was threatened as a result of the discontinuance by the United States of the reciprocal arrangements which had prevailed."

A high freight rate is simply defeating that purpose.

If the changes, prior to 1927, placed upon the commerce and industry of the Maritimes a burden which it was not intended to bear, then changes in the last two years have had the same effect, and we respectfully submit that the same circumstances which impelled the Duncan Commission to give relief, exist now as well.

Thank you verymuch, my lord.

THE CHAIRMAN: Thank you, Mr. Barry.

---The Commission adjourned at 4:50 p.m. to meet again at 10:30 a.m. on Tuesday, May 16th, 1950.

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